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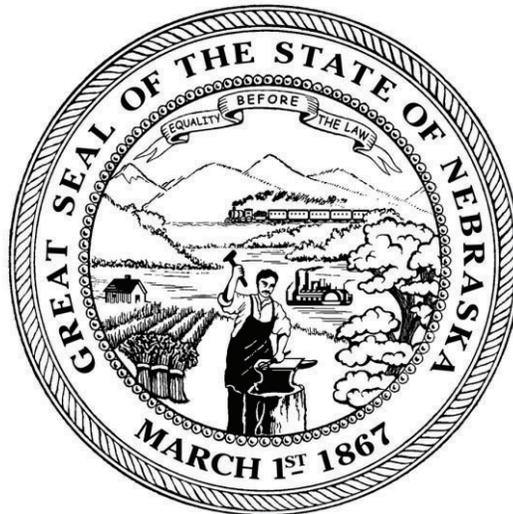


REVISED STATUTES OF NEBRASKA

2015 SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 TO 52, INCLUSIVE



CITE AS FOLLOWS

R.S.SUPP.,2015

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Joanne M. Pepperl
Revisor of Statutes

For the benefit of the
State of Nebraska

Errata:

All errors so far discovered in the printing of the Reissue Revised Statutes of Nebraska, and the various supplements thereto, are corrected herein. The Revisor of Statutes would appreciate having reported to her any mistakes or errors of any kind in the Reissue Revised Statutes of Nebraska or in the various supplements thereto.

Reissue of Volumes 1 to 6

The laws enacted subsequent to 1943 which are included in the reissuance of Volumes 1 to 6 are not repeated and duplicated in this supplement. The dates of the latest reissue of such volumes are:

| | |
|-----------------------------|------|
| Volumes 1, 1A, and 1B | 2012 |
| Volumes 2 and 2A..... | 2008 |
| Volume 3..... | 2008 |
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| Volume 6..... | 2001 |
| Cross Reference Tables..... | 2000 |

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CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2015 Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the One Hundred Fourth Legislature, First Session, 2015, of the Nebraska State Legislature as shown by the enrolled bills on file in the office of the Secretary of State, save and except such compilation changes and omissions as are specifically authorized by sections 49-705 and 49-769.

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Lincoln, Nebraska
August 1, 2015

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CHAPTER 1 ACCOUNTANTS

Section

- 1-105. Act, how cited.
1-106. Terms, defined.
1-153. Peer review; rules and regulations.

1-105 Act, how cited.

Sections 1-105 to 1-171 shall be known and may be cited as the Public Accountancy Act.

Source: Laws 1957, c. 1, § 64, p. 78; Laws 1991, LB 75, § 14; Laws 1994, LB 957, § 7; R.S.Supp., 1996, § 1-169; Laws 1997, LB 114, § 1; Laws 2009, LB31, § 1; Laws 2015, LB159, § 1.
Effective Date August 30, 2015.

1-106 Terms, defined.

For purposes of the Public Accountancy Act, unless the context otherwise requires:

- (1) Board means the Nebraska State Board of Public Accountancy;
- (2) Certificate means a certificate issued under sections 1-114 to 1-124;
- (3) Firm means a partnership, limited liability company, or corporation engaged in the practice of public accountancy in this state entitled to register with the board or a proprietorship engaged in the practice of public accountancy in this state;
- (4) Partnership includes, but is not limited to, a limited liability partnership;
- (5) Peer review means a review of one or more aspects of the professional work of a firm that either or both performs attest engagements or performs compilations by an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state and who is not affiliated with the firm being reviewed;
- (6) Permit means a permit to engage in the practice of public accountancy in this state issued under section 1-136;
- (7) Practice privilege means the privilege of an accountant to practice public accountancy or hold himself or herself out as a certified public accountant in this state in accordance with section 1-125.01;
- (8) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States; and
- (9) Temporary practice privilege means the privilege of a foreign accountant to temporarily practice public accountancy in this state in accordance with section 1-125.02.

Source: Laws 1957, c. 1, § 1, p. 55; Laws 1991, LB 75, § 1; Laws 1997, LB 114, § 3; Laws 2009, LB31, § 2; Laws 2015, LB159, § 2.
Effective Date August 30, 2015.

1-153 Peer review; rules and regulations.

The board may adopt and promulgate rules and regulations to require a firm to enroll in and comply with all requirements of a board-approved program of peer review and comply with all restrictions placed on any permit by the board in response to the results of a peer review.

Source: Laws 2015, LB159, § 3.
Effective Date August 30, 2015.

CHAPTER 2

AGRICULTURE

Article.

3. Community Gardens Act. 2-301 to 2-305.
15. Nebraska Natural Resources Commission.
 - (a) General Provisions. 2-1507, 2-1513.
 - (c) Nebraska Resources Development Fund. 2-1587, 2-1588.
32. Natural Resources. 2-3204.
37. Dry Bean Resources. 2-3753 to 2-3763.
43. Agricultural Liming Materials. 2-4323 to 2-4327.
46. Erosion and Sediment Control. 2-4603 to 2-4613.

ARTICLE 3

COMMUNITY GARDENS ACT

Section

- 2-301. Act, how cited.
- 2-302. Legislative findings and declarations; legislative intent; purpose of act.
- 2-303. Terms, defined.
- 2-304. Use of vacant public land; conditions; application; response.
- 2-305. Community gardens task force; members; goals; reports.

2-301 Act, how cited.

Sections 2-301 to 2-305 shall be known and may be cited as the Community Gardens Act.

Source: Laws 2015, LB175, § 11.
Effective date May 28, 2015.

2-302 Legislative findings and declarations; legislative intent; purpose of act.

(1) The Legislature finds and declares that:

(a) Community gardens provide significant health, educational, and social benefits to the general public, especially for those who reside in urban and suburban areas of this state;

(b) The community garden movement (i) continues to provide low-cost food that is fresh and nutritious for those who may be unable to readily afford fresh fruits and vegetables for themselves or their families, (ii) promotes public health and healthier individual lifestyles by encouraging better eating habits and increased physical activity by growing food, (iii) fosters the retention and expansion of open spaces, particularly in urban environments, (iv) enhances urban and suburban environmental quality and community beautification, (v) provides inexpensive community building activities, recreation, and physical exercise for all age groups, (vi) establishes a safe place for community involvement and helps to reduce the incidence of crime, (vii) engenders a closer relationship between urban residents, nature, and the local environment, and (viii) fosters green job training and ecological education at all levels; and

(c) It is the public policy of this state to promote and foster growth in the number of community gardens and the acreage of such gardens.

(2) It is the intent of the Legislature and the purpose of the Community Gardens Act to foster growth in the number, size, and scope of community gardens in this state by encouraging state agencies, municipalities, and private parties in their efforts to promote community gardens.

Source: Laws 2015, LB175, § 12.
Effective date May 28, 2015.

2-303 Terms, defined.

For purposes of the Community Gardens Act:

(1) Community garden means public or private land upon which individuals have the opportunity to raise a garden on land which they do not themselves own;

(2) Garden means a piece or parcel of land appropriate for cultivation of herbs, fruits, flowers, nuts, honey, poultry for egg production, maple syrup, ornamental or vegetable plants, nursery products, or vegetables;

(3) Municipality means any county, village, or city or any office or agency of a county, village, or city;

(4) State agency means any department or other agency of the State of Nebraska;

(5) Use means to avail oneself of or to employ without conveyance of title gardens on vacant public land by any individual or organization; and

(6) Vacant public land means any land owned by the state or another governmental subdivision, including a municipality, that is not in use for a public purpose, is otherwise unoccupied, idle, or not being actively utilized for a period of at least six months, and is suitable for garden use.

Source: Laws 2015, LB175, § 13.
Effective date May 28, 2015.

2-304 Use of vacant public land; conditions; application; response.

(1) A state agency or municipality having title to vacant public land may permit community organizations to use such lands for community garden purposes. Such use of vacant public land may be conditioned on the community organization having liability insurance and accepting liability for injury or damage resulting from use of the vacant public land for community garden purposes. State agencies and municipalities may adopt and promulgate rules, regulations, ordinances, or resolutions to establish an application process for a community garden. The applicant may include a request for access to a fire hydrant or other source of water owned or operated by the state agency or municipality or by a utility district in order to provide water to the community garden. The state agency, municipality, or utility district shall consider whether to supply the water to the applicant at a reduced or fixed rate.

(2) A state agency or municipality which receives an application pursuant to this section shall respond to the applicant within sixty days from the date on which the application is received and shall make a final determination within one hundred eighty days from such date.

Source: Laws 2015, LB175, § 14.
Effective date May 28, 2015.

2-305 Community gardens task force; members; goals; reports.

(1) The Director of Agriculture shall establish a community gardens task force on or before August 1, 2015, to identify and develop ways to encourage state agencies, municipalities, and individuals to establish and expand community gardens. The director shall designate a chairperson of the task force. The members of the task force shall be appointed by the director and shall include no more than nine members. At least three of the members shall be representatives of nonprofit organizations involved with community gardens. The remaining members may include representation from appropriate state agencies, existing community gardens, counties, cities, towns, villages, utility districts, and school districts.

(2) The director may request the assistance of other state agencies to carry out the work of the task force.

(3) The goals of the task force may include, but are not limited to, the study, evaluation, and development of recommendations (a) to encourage the establishment and expansion of community gardens by state agencies, municipalities, and individuals, (b) to encourage cooperation between the activities and operations of community gardens and the provision of donated food to local voluntary food assistance programs for the poor and disadvantaged, and (c) to increase the benefits that community gardens may provide to the community in which they are located.

(4) In carrying out its duties under subsection (3) of this section, the task force may consider recommendations that (a) encourage the execution of conservation easements by state agencies, municipalities, or individuals to establish or protect community gardens, (b) encourage the donation or lease of lands for community gardens, (c) encourage development of model zoning codes, local land-use laws, or other municipal policies that could encourage the establishment or retention of community gardens, and (d) provide for any other activity to achieve the goals deemed appropriate by the task force.

(5) The task force shall issue a preliminary report to the Department of Agriculture and electronically to the Legislature no later than December 15, 2015, and shall issue a final report to the Department of Agriculture and electronically to the Legislature no later than December 15, 2016.

Source: Laws 2015, LB175, § 15.
Effective date May 28, 2015.

ARTICLE 15**NEBRASKA NATURAL RESOURCES COMMISSION**

(a) GENERAL PROVISIONS

Section

- 2-1507. Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.
2-1513. Water Sustainability Fund; legislative analysis.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

- 2-1587. Nebraska Resources Development Fund; created; reserve fund; administration; investment.
2-1588. Fund; allocation; report; projects; costs.

(a) GENERAL PROVISIONS

2-1507 Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.

(1) It is the intent of the Legislature that the Water Sustainability Fund be equitably distributed statewide to the greatest extent possible for the long term and give priority funding status to projects which are the result of federal mandates.

(2) Distributions to assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project shall be based on a demonstration of need and shall equal ten percent of the total annual appropriation to the Water Sustainability Fund if (a) applicants have applied for such funding as required under section 2-1509 and (b) any such application has been recommended for further consideration by the director and is subsequently approved for allocation by the commission pursuant to subsection (1) of section 2-1511. If more than one municipality demonstrates a need for funds pursuant to this subsection, funds shall be distributed proportionally based on population.

(3) Any money in the Water Sustainability Fund may be allocated by the commission to applicants in accordance with sections 2-1506 to 2-1513. Such money may be allocated in the form of grants or loans for water sustainability programs, projects, or activities undertaken within the state. The allocation of funds to a program, project, or activity in one form shall not of itself preclude additional allocations in the same or any other form to the same program, project, or activity.

(4) When the commission has approved an allocation of funds to a program, project, or activity, the Department of Natural Resources shall establish a subaccount in the Water Sustainability Fund and credit the entire amount of the allocation to the subaccount. Individual subaccounts shall be established for each program, project, or activity approved by the commission. Additional allocations to a program, project, or activity shall be credited to the same subaccount as the original allocation. Subaccounts shall not be subject to transfer out of the Water Sustainability Fund, except that the commission may authorize the transfer of excess or unused funds from a subaccount and into the unreserved balance of the fund.

(5) A natural resources district is eligible for funding from the Water Sustainability Fund only if the district has adopted or is currently participating in the development of an integrated management plan pursuant to subdivision (1)(a) or (b) of section 46-715.

(6) The commission shall utilize the resources and expertise of and collaborate with the Department of Natural Resources, the University of Nebraska, the Department of Environmental Quality, the Nebraska Environmental Trust Board, and the Game and Parks Commission on funding and planning for water programs, projects, or activities.

(7) A biennial report shall be made to the Clerk of the Legislature describing the work accomplished by the use of funds towards the goals of the Water Sustainability Fund beginning on December 31, 2015. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2014, LB1098, § 4; Laws 2015, LB661, § 21.
Effective date May 21, 2015.

2-1513 Water Sustainability Fund; legislative analysis.

The Appropriations Committee of the Legislature shall, beginning with the FY2023-25 biennial budget review process, conduct a biennial analysis of the financial status of the Water Sustainability Fund, including a review of the committed and uncommitted balance of the fund and the financial impact of pending programs, projects, or activities. The committee shall base its recommendation for transfers to the Water Sustainability Fund upon information provided in the review process.

Source: Laws 2014, LB1098, § 10; Laws 2015, LB661, § 22.
Effective date May 21, 2015.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND**2-1587 Nebraska Resources Development Fund; created; reserve fund; administration; investment.**

(1) There is hereby created the Nebraska Resources Development Fund to be administered by the department. The State Treasurer shall credit to the fund, to carry out sections 2-1586 to 2-1595, such money as is (a) appropriated to or transferred into the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and (c) donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by any department or agency of the United States may also be credited to this fund if so directed by such department or agency. The money in the fund shall not be subject to any fiscal year or biennium limitation requiring reappropriation of the unexpended balance at the end of the fiscal year or biennium. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(2) To aid in the funding of projects and to prevent excessive fluctuations in appropriation requirements for the Nebraska Resources Development Fund, the department shall create a reserve fund to be used only for projects requiring total expenditures from the Nebraska Resources Development Fund in excess of five million dollars. Unless disapproved by the Governor, the department may credit to such reserve fund that portion of any appropriation to the Nebraska Resources Development Fund which exceeds five million dollars. The department may also credit to the reserve fund such other funds as it determines are available.

(3) Any money in the Nebraska Resources Development Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1974, LB 975, § 2; R.S.1943, (1977), § 2-3264; Laws 1984, LB 985, § 1; Laws 1986, LB 258, § 5; Laws 1995, LB 7, § 8; Laws 2000, LB 900, § 32; Laws 2009, First Spec. Sess., LB3, § 4; Laws 2015, LB661, § 23.
Effective date May 21, 2015.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

2-1588 Fund; allocation; report; projects; costs.

(1) No money in the Nebraska Resources Development Fund may be reallocated by the commission in accordance with sections 2-1586 to 2-1595 for utilization by the department, by any state office, agency, board, or commission, or by any political subdivision of the state which has the authority to develop the state's water and related land resources after March 30, 2014. The commission may commit appropriated funds to projects approved as of March 30, 2014, not to exceed amounts specifically allocated to such projects prior to March 30, 2014, unless specific appropriations or transfers to exceed the March 30, 2014, allocation amounts are approved by the Legislature. If such specific appropriations or transfers are made, the commission shall develop procedures to allocate the additional funding to projects approved as of March 30, 2014. Allocations shall not exceed funds appropriated for such purpose. Any of such funds remaining after all such project costs have been completely funded shall be transferred to the Water Sustainability Fund by the State Treasurer. Prior to March 30, 2014, the Nebraska Resources Development Fund may be allocated in the form of grants or loans or for acquiring state interests in water and related land resources programs and projects undertaken within the state. The allocation of funds to a program or project in one form shall not of itself preclude additional allocations in the same or any other form to the same program or project. Funds may also be allocated to assist natural resources districts in the preparation of management plans as provided in section 46-709. Funds so allocated shall not be subject to sections 2-1589 to 2-1595.

(2) No project, including all related phases, segments, parts, or divisions, shall receive more than ten million dollars from the fund. On July 1 of each year after 1993, the director shall adjust the project cost and payment limitation of this subsection by an amount equal to the average percentage change in a readily available construction cost index for the prior three years.

(3) Prior to September 1 of each even-numbered year, a biennial report shall be made to the Governor and the Clerk of the Legislature describing the work accomplished by the use of such development fund during the immediately preceding two-year period. The report submitted to the Clerk of the Legislature shall be submitted electronically. The report shall include a complete financial statement. Each member of the Legislature shall receive an electronic copy of such report upon making a request to the director.

Source: Laws 1974, LB 975, § 3; Laws 1979, LB 322, § 3; Laws 1981, LB 545, § 2; R.S.Supp., 1982, § 2-3265; Laws 1984, LB 1106, § 17; Laws 1985, LB 102, § 2; Laws 1993, LB 155, § 1; Laws 1996, LB 108, § 2; Laws 1998, LB 656, § 5; Laws 2000, LB 900, § 33; Laws 2001, LB 129, § 1; Laws 2004, LB 962, § 2; Laws 2006, LB 1226, § 3; Laws 2009, LB179, § 1; Laws 2012, LB782, § 3; Laws 2014, LB906, § 9; Laws 2015, LB661, § 24.
Effective date May 21, 2015.

ARTICLE 32

NATURAL RESOURCES

Section
2-3204. Budget.

2-3204 Budget.

A natural resources district may adopt either an annual or a biennial budget pursuant to the Nebraska Budget Act.

Source: Laws 2015, LB164, § 1.
Effective date August 30, 2015.

Cross References

Nebraska Budget Act, see section 13-501.

ARTICLE 37

DRY BEAN RESOURCES

Section

- 2-3753. Commission; powers and duties.
- 2-3755. Dry beans; fee; adjustment; payment.
- 2-3760. Repealed. Laws 2015, LB 242, § 6.
- 2-3762. Commission; annual report; contents.
- 2-3763. Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.

2-3753 Commission; powers and duties.

The commission shall have the following powers and duties:

- (1) To adopt and devise a dry bean program consisting of research, education, advertising, publicity, and promotion to increase total consumption of dry beans on a state, national, and international basis;
- (2) To prepare and approve a budget consistent with limited receipts and the scope of the dry bean program;
- (3) To adopt and promulgate reasonable rules and regulations necessary to carry out the dry bean program;
- (4) To procure and evaluate data and information necessary for the proper administration and operation of the dry bean program;
- (5) To employ personnel and contract for services which are necessary for the proper operation of the dry bean program;
- (6) To establish a means whereby the grower and processor of dry beans has the opportunity at least annually to offer his or her ideas and suggestions relative to commission policy for the coming year;
- (7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;
- (8) To bond such persons as may be necessary in order to insure adequate protection of funds;
- (9) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the commission and to keep such records open to examination by any grower or processor participant during normal business hours;
- (10) To prohibit any funds collected by the commission from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The commission shall not expend more than fifteen percent of its annual budget to influence federal legislation. The purpose of such expenditures for federal lobbying activity shall be limited to activity supporting the underlying objectives of the dry bean program relating to market development, education, and research;

(11) To establish an administrative office at such place in the state as may be suitable for the proper discharge of the functions of the commission; and

(12) To adopt and promulgate rules and regulations to carry out the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 19; Laws 2015, LB242, § 1.
Effective date April 14, 2015.

2-3755 Dry beans; fee; adjustment; payment.

(1) Beginning August 1, 1987, there shall be paid to the commission a fee of six cents per hundredweight upon all dry beans grown in the state during 1987 and thereafter and sold through commercial channels. Beginning January 1, 1989, until July 31, 2015, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the Dry Bean Resources Act, reduce or increase such fee for such period as it shall deem justifiable, but not less than one year and not to exceed ten cents per hundredweight.

(2) Beginning August 1, 2015, the fee imposed by this section shall be fifteen cents per hundredweight. Beginning January 1, 2017, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the act, reduce or increase such fee for such period as it shall deem justifiable, but not less than one year and not to exceed twenty-four cents per hundredweight.

(3) Two-thirds of the fee levied under this section shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. The first purchaser shall pay the remaining one-third of the fee. No dry beans shall be subject to the fee more than once.

Source: Laws 1987, LB 145, § 21; Laws 2015, LB242, § 2.
Effective date April 14, 2015.

2-3760 Repealed. Laws 2015, LB 242, § 6.

2-3762 Commission; annual report; contents.

(1) The commission shall prepare and make available an annual report at least thirty days prior to January 1 of each year which shall set forth in detail the income received from the dry bean assessment for the previous year and shall include:

(a) The expenditure of all funds by the commission during the previous year for the administration of the Dry Bean Resources Act;

(b) The action taken by the commission on all contracts requiring the expenditure of funds by the commission;

(c) A description of all such contracts;

(d) Detailed explanation of all programs relating to the discovery, promotion, and development of bean products and industries for the utilization of dry beans, the direct expense associated with each program, and copies of such programs if in writing; and

(e) The name and address of each member of the commission and a copy of all rules and regulations adopted and promulgated by the commission.

(2) The report and a copy of all contracts requiring expenditure of funds by the commission shall be available to the public upon request. Notice of availability of such report shall be provided to the Director of Agriculture, the Clerk of the Legislature, and each grower and first purchaser subject to the checkoff.

Source: Laws 1987, LB 145, § 28; Laws 2015, LB242, § 3.
Effective date April 14, 2015.

2-3763 Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.

The State Treasurer shall establish in the treasury of the State of Nebraska a fund to be known as the Dry Bean Development, Utilization, Promotion, and Education Fund, to which fund shall be credited funds collected by the commission pursuant to the Dry Bean Resources Act, including license fees, royalties, or any repayments relating to the fund. The fund shall be expended for the administration of such act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1987, LB 145, § 29; Laws 1995, LB 7, § 20; Laws 2015, LB242, § 4.
Effective date April 14, 2015.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 43

AGRICULTURAL LIMING MATERIALS

Section

- 2-4323. Retailer licensee; tonnage report; inspection fee; additional administrative fee; department; powers; director; duties.
- 2-4324. Fees; disbursement.
- 2-4326. Director; department; enforcement; orders; seizure of material; procedure.
- 2-4327. Violations; penalty; written warning; Attorney General or county attorney; duties; enforcement; appeal.

2-4323 Retailer licensee; tonnage report; inspection fee; additional administrative fee; department; powers; director; duties.

(1) Every retailer licensee shall file, not later than the last day of January and July of each year, a semiannual tonnage report on forms provided by the department, setting forth the number of net tons of each agricultural liming material sold in Nebraska during the preceding six-month period, which report shall cover the periods from July 1 to December 31 and January 1 to June 30, and such other information as the director shall deem necessary. All persons required to be licensed pursuant to the Agricultural Liming Materials Act shall file such report regardless of whether any inspection fee is due. Upon filing the report, such person shall pay the inspection fee at the rate prescribed pursuant to this section. The inspection fee shall be at the rate fixed by the director but not exceeding ten cents per ton. The fee shall be set at an amount to cover the expenses of the inspection provided in section 2-4325 and the costs of administering this section. The minimum inspection fee required pursuant to this

section shall be five dollars, and no inspection fee shall be paid more than once for any one product. In the case of agricultural lime slurry, the fee shall be paid on the base lime material only.

(2) If a person fails to report and pay the fee required by subsection (1) of this section by January 31 and July 31, the fee shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees, and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this subsection shall constitute sufficient cause for the cancellation of all product registrations or licenses on file for such person.

(3) The director shall annually make information available in such form as he or she may deem proper concerning the tons of agricultural liming material sold in this state. Such report shall in no way divulge the operation of any registrant or licensee.

Source: Laws 1981, LB 396, § 23; Laws 1983, LB 539, § 8; Laws 2015, LB92, § 1.

Operative date February 1, 2016.

2-4324 Fees; disbursement.

All fees paid to the department pursuant to the Agricultural Liming Materials Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. All money credited to the fund shall be used by the department to aid in defraying expenses of administering the Agricultural Liming Materials Act and the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Source: Laws 1981, LB 396, § 24; Laws 2003, LB 157, § 3; Laws 2015, LB92, § 2.

Operative date August 30, 2015.

Cross References

Nebraska Commercial Fertilizer and Soil Conditioner Act, see section 81-2,162.22.

2-4326 Director; department; enforcement; orders; seizure of material; procedure.

(1) When the director has reasonable cause to believe agricultural liming materials are being sold in violation of the Agricultural Liming Materials Act or the rules and regulations adopted and promulgated pursuant to the act, he or she may issue and enforce a written or printed stop-sale, stop-use, or removal order to the owner or custodian of any lot of agricultural liming material. The department may order the owner or custodian to hold such material at a designated place when the department finds such material is being offered or exposed for sale by the owner or custodian in violation of the act or the rules and regulations. Such material shall be released when the act or the rules and

regulations have been complied with, such violations have otherwise been legally disposed of in writing, and all costs and expense incurred in connection with such material's holding have been paid. This section shall not apply if the owner or custodian is the ultimate consumer of the agricultural liming material and he or she has title to such materials.

(2) Any agricultural liming materials not in compliance with the act or the rules and regulations shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which the agricultural liming materials are located. If the court finds the agricultural liming materials to be in violation of the act or the rules and regulations and orders the condemnation of the agricultural liming materials, such agricultural liming materials shall be disposed of in any manner consistent with the quality of the agricultural liming materials and the laws of the State of Nebraska. The court shall not order disposition without first giving the claimant an opportunity to apply to the court for release of the agricultural liming materials or for permission to process or relabel such product to bring it into compliance with the act.

Source: Laws 1981, LB 396, § 26; Laws 1983, LB 539, § 10; Laws 1988, LB 871, § 27; Laws 2015, LB92, § 3.
Operative date August 30, 2015.

2-4327 Violations; penalty; written warning; Attorney General or county attorney; duties; enforcement; appeal.

(1) Any person violating the Agricultural Liming Materials Act shall be guilty of a Class IV misdemeanor upon the first conviction thereof, and a Class II misdemeanor for each subsequent conviction thereof.

(2) Nothing in the act shall be construed to require the director or his or her duly authorized agent to report a violation in order to prosecute or to institute seizure proceedings as a result of minor violations of the act when he or she believes that the public interest will best be served by a suitable written warning to the violator.

(3) The Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, shall pursue appropriate proceedings pursuant to section 2-4326 or this section or both without delay.

(4) In order to insure compliance with the act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(5) Any person adversely affected by an action, order, or ruling made by the department pursuant to the act may appeal the action, order, or ruling, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1981, LB 396, § 27; Laws 2015, LB92, § 4.
Operative date August 30, 2015.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 46

EROSION AND SEDIMENT CONTROL

Section

- 2-4603. Terms, defined.
- 2-4604. State program; director; duties; program contents; revisions; hearings.
- 2-4605. District program; contents; review.
- 2-4608. Excess soil erosion; complaint; inspection; remedial action; failure to comply; cease and desist order.
- 2-4610. Conformance with farm unit conservation plan or soil-loss tolerance level; effect; cost-sharing assistance; availability; lack of cost-sharing assistance; effect.
- 2-4612. Order for immediate compliance; when authorized.
- 2-4613. District court action; procedures; order; appeal; failure to comply with order; effect.

2-4603 Terms, defined.

For purposes of the Erosion and Sediment Control Act, unless the context otherwise requires:

- (1) Commission means the Nebraska Natural Resources Commission;
- (2) Conservation agreement means an agreement between the owner or operator of a farm unit and the district in which the owner or operator agrees to implement a farm unit conservation plan or, with the approval of the district within which the farm unit is located, a portion of a farm unit conservation plan. The agreement shall include a schedule for implementation and may be conditioned on the district or other public entity furnishing technical, planning, or financial assistance in the establishment of the soil and water conservation practices necessary to implement the plan or a portion of the plan;
- (3) Director means the Director of Natural Resources;
- (4) District means a natural resources district;
- (5) Erosion or sediment control practice means:
 - (a) The construction or installation and maintenance of permanent structures or devices necessary to carry, to a suitable outlet away from any building site, any commercial or industrial development, or any publicly or privately owned recreational or service facility not served by a central storm sewer system, any water which would otherwise cause erosion in excess of the applicable soil-loss tolerance level and which does not carry or constitute sewage or industrial or other waste;
 - (b) The employment of temporary devices or structures, temporary seeding, fiber mats, plastic, straw, diversions, silt fences, sediment traps, or other measures adequate either to prevent erosion in excess of the applicable soil-loss tolerance level or to prevent excessive downstream sedimentation from land which is the site of or is directly affected by any nonagricultural land-disturbing activity; or
 - (c) The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, or highway or the construction or installation thereon of permanent structures or devices or other measures adequate to prevent erosion of the right-of-way in excess of the applicable soil-loss tolerance level;
- (6) Excess erosion means the occurrence of erosion in excess of the applicable soil-loss tolerance level which causes or contributes to an accumulation of

sediment upon the lands of any other person to the detriment or damage of such other person;

(7) Farm unit conservation plan means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the district within which the farm unit is located based upon the determined conservation needs for the farm unit and identifying the soil and water conservation practices which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil-loss tolerance level. The plan may also, if practicable, identify alternative practices by which such objective may be attained;

(8) Nonagricultural land-disturbing activity means a land change, including, but not limited to, tilling, clearing, grading, excavating, transporting, or filling land, which may result in soil erosion from wind or water and the movement of sediment and sediment-related pollutants into the waters of the state or onto lands in the state but does not include the following:

(a) Activities related directly to the production of agricultural, horticultural, or silvicultural crops, including, but not limited to, tilling, planting, or harvesting of such crops;

(b) Installation of aboveground public utility lines and connections, fence-posts, sign posts, telephone poles, electric poles, and other kinds of posts or poles;

(c) Emergency work to protect life or property;

(d) Activities related to the construction of housing, industrial, and commercial developments on sites under two acres in size; and

(e) Activities related to the operation, construction, or maintenance of industrial or commercial public power district or public power and irrigation district facilities or sites when such activity is conducted pursuant to state or federal law or is part of the operational plan for such facility or site;

(9) Person means any individual, partnership, limited liability company, firm, association, joint venture, public or private corporation, trust, estate, commission, board, institution, utility, cooperative, municipality or other political subdivision of this state, interstate body, or other legal entity;

(10) Soil and water conservation practice means a practice which serves to prevent erosion of soil by wind or water in excess of the applicable soil-loss tolerance level from land used only for agricultural, horticultural, or silvicultural purposes. Soil and water conservation practice includes, but is not limited to:

(a) Permanent soil and water conservation practice, including the planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, and other permanent soil and water practices approved by the district; and

(b) Temporary soil and water conservation practice, including the planting of annual or biennial crops, use of strip-cropping, contour planting, minimum or mulch tillage, and other cultural practices approved by the district; and

(11) Soil-loss tolerance level means the maximum amount of soil loss due to erosion by wind or water, expressed in terms of tons per acre per year, which is determined to be acceptable in accordance with the Erosion and Sediment Control Act. Soil loss may be impacted by water erosion which may include (a) sheet and rill erosion which includes relatively uniform soil loss across the entire field slope which may leave small channels located at regular intervals across the slope and (b) ephemeral gully erosion which occurs in well-defined

depressions or natural drainageways where concentrated overland flow results in the convergence of rills forming deeper and wider channels.

Source: Laws 1986, LB 474, § 3; Laws 1988, LB 594, § 1; Laws 1993, LB 121, § 80; Laws 1994, LB 480, § 22; Laws 2015, LB206, § 1.
Effective date August 30, 2015.

2-4604 State program; director; duties; program contents; revisions; hearings.

(1) The director shall, in cooperation with the commission, the Department of Environmental Quality, the Natural Resources Conservation Service of the United States Department of Agriculture, and other appropriate state and federal agencies, develop and coordinate a comprehensive state erosion and sediment control program designed to reduce soil erosion in this state to tolerable levels. The program, which shall be reasonable and attainable, shall include:

- (a) The soil-loss tolerance level for the various types of soils in the state;
- (b) State goals and a state strategy for reducing soil losses on all lands in the state to an amount no more than the applicable soil-loss tolerance level;
- (c) Guidelines for establishing priorities for implementation of the program at the state and local levels;
- (d) Types of assistance to be provided by the state to districts, cities, and counties in the implementation of the state and local erosion and sediment control programs; and
- (e) Such other elements as the director deems appropriate in accordance with the objectives of the Erosion and Sediment Control Act, including any recommendations for further legislative or administrative action.

(2) The state erosion and sediment control program may be revised by the director and the commission at any time. Before approving any such changes, the director and the commission shall conduct at least four public hearings or meetings to receive information from interested persons in different parts of the state.

Source: Laws 1986, LB 474, § 4; Laws 1993, LB 3, § 5; Laws 2015, LB206, § 2.
Effective date August 30, 2015.

2-4605 District program; contents; review.

(1) Each district shall, with the approval of the director, adopt a district program for implementation of the state erosion and sediment control program. Each district's program shall include the:

(a) Soil-loss tolerance levels for the various types of soils in the district. The soil-loss tolerance levels shall be adopted and promulgated as rules and regulations and may be more but not less stringent than those adopted by the director. It is the intent of the Legislature that no land within the state be assigned a soil-loss tolerance level that cannot reasonably be applied to such land;

(b) Recommended erosion or sediment control practices and soil and water conservation practices which are suitable for controlling erosion and sedimentation within the district; and

(c) Programs, procedures, and methods the district plans to adopt and employ to implement the state erosion and sediment control program. Each district may subsequently amend or modify the program as necessary, subject to the approval of the director.

(2) The director with the advice and recommendation of the commission shall review each district's program and all amendments thereto and shall approve the program or amendments if the director determines that the district's program is reasonable, attainable, and in conformance with the state erosion and sediment control program.

Source: Laws 1986, LB 474, § 5; Laws 1988, LB 594, § 2; Laws 2015, LB206, § 3.

Effective date August 30, 2015.

2-4608 Excess soil erosion; complaint; inspection; remedial action; failure to comply; cease and desist order.

(1) Except to the extent jurisdiction has been assumed by a municipality or county in accordance with section 2-4606, the district may inspect or cause to be inspected any land within the district upon receipt of a written and signed complaint which alleges that soil erosion is occurring in excess of the applicable soil-loss tolerance level. Complaints shall be filed on a form provided by the director. Complaints may be filed by any owner or operator of land being damaged by sediment, by any state agency or political subdivision whose roads or other public facilities are being damaged by sediment, by any state agency or political subdivision with responsibility for water quality maintenance if it is alleged that the soil erosion complained of is adversely affecting water quality, or by a staff member or other agent of the district authorized by the board of directors to file such complaints. Inspections following receipt of a written and signed complaint may be made only after notice to the owner and, if appropriate, the operator of the land involved, and such person shall be given an opportunity to accompany the inspector.

(2) The owner, the operator if appropriate, and the district may agree to a plan and schedule for eliminating excess erosion on and sedimentation from the land involved. Any such agreement may be enforced in district court in the same manner as an administrative order issued pursuant to the Erosion and Sediment Control Act. If no agreement is reached, the findings of the inspection shall be presented to the district board of directors and the owner and, if appropriate, the operator of the land shall be given a reasonable opportunity to be heard at a meeting of the board or, if requested, at a public hearing. If the district finds that the alleged sediment damage is occurring and that excess erosion is occurring on the land inspected, it shall issue an administrative order to the owner of record and, if appropriate, to the operator describing the land and stating as nearly as possible the extent to which the soil erosion exceeds the applicable soil-loss tolerance level. When the complained-of erosion is the result of agricultural, horticultural, or silvicultural activities, the district shall direct the owner and, if appropriate, the operator to bring the land into conformance with the applicable soil-loss tolerance level. When the complained-of erosion is the result of a nonagricultural land-disturbing activity, the district may authorize the owner and, if appropriate, the operator to either bring such land into conformance with the soil-loss tolerance level or to prevent sediment resulting from excess erosion from leaving such land.

(3) The district may specify, as applicable, alternative soil and water conservation practices or erosion or sediment control practices which the owner and, if appropriate, the operator may use to comply with the administrative order. A copy of the administrative order shall be delivered by either personal service or certified or registered mail to each person to whom it is directed and shall:

(a) In the case of erosion occurring on the site of any nonagricultural land-disturbing activity, state a reasonable time after service or mailing of the order when the work necessary to establish or maintain erosion or sediment control practices shall be commenced and the time, not more than forty-five days after service or mailing of the order, when the work shall be satisfactorily completed;

(b) In all other cases, state the time, not more than six months after service or mailing of the order, the work needed to establish or maintain the necessary soil and water conservation practices or permanent erosion control practices shall be commenced and the time, not more than one year after the service or mailing of the order, the work shall be satisfactorily completed, unless the requirements of the order are superseded by section 2-4610; and

(c) State any reasonable requirements regarding the operation, utilization, and maintenance of the practices to be installed, constructed, or applied.

(4) Following refusal of a landowner to discontinue an activity causing erosion described in this section and to establish a plan and schedule for eliminating excess erosion pursuant to subsection (2) of this section, and if the immediate discontinuance of such activity is necessary to reduce or eliminate damage to neighboring property, the district may petition the district court for an order to the owner and, if appropriate, the operator, to immediately cease and desist such activity until excess erosion can be brought into conformance with the soil-loss tolerance level or sediment resulting from excess erosion is prevented from leaving the property.

(5) Upon failure to comply with the order, the owner or, if appropriate, the operator shall be deemed in violation of the Erosion and Sediment Control Act and subject to further actions as provided by such act.

Source: Laws 1986, LB 474, § 8; Laws 1988, LB 594, § 3; Laws 1994, LB 480, § 23; Laws 2015, LB206, § 4.
Effective date August 30, 2015.

2-4610 Conformance with farm unit conservation plan or soil-loss tolerance level; effect; cost-sharing assistance; availability; lack of cost-sharing assistance; effect.

(1) Any person owning or operating private agricultural, horticultural, or silvicultural lands who has a farm unit conservation plan approved by the district and is implementing and maintaining the plan in strict compliance with a conservation agreement or any person whose normal agricultural, horticultural, and silvicultural practices are in conformance with the applicable soil-loss tolerance level shall, for purposes of such land, be deemed to be in compliance with the requirements of the Erosion and Sediment Control Act and any approved erosion and sediment control program.

(2) To prevent excess erosion and sediment from leaving the land due to any agricultural or nonagricultural land-disturbing activity, cost-sharing assistance may be available from any district. Such assistance may be used for any erosion or sediment control practice. The lack of available cost-sharing assistance does

not offset the requirement that the owner and, if appropriate, the operator of such land comply with the terms of an approved plan of compliance or an administrative order.

Source: Laws 1986, LB 474, § 10; Laws 1988, LB 594, § 4; Laws 1994, LB 480, § 24; Laws 2015, LB206, § 5.
Effective date August 30, 2015.

2-4612 Order for immediate compliance; when authorized.

The district shall petition the district court for a court order requiring immediate compliance with an administrative order previously issued by the district if:

(1) The work necessary to comply with the administrative order is not commenced on or before the date specified in such order or in any supplementary orders subsequently issued unless, in the judgment of the district, the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person to whom such order is directed and the person can be relied upon to commence and complete the necessary work at the earliest possible time;

(2) The work is not being performed with due diligence or is not satisfactorily completed by the date specified in the administrative order or the practices are not being operated, utilized, or maintained as required;

(3) The work is not of a type or quality specified by the district and, when completed, it will not or does not reduce soil erosion from such land below the soil-loss tolerance level or, to the extent excess erosion is permitted by the district for a nonagricultural land-disturbing activity, will not or does not prevent sediment resulting from such excess erosion from leaving the land involved; or

(4) The person to whom the administrative order is directed advises the district that he or she does not intend to commence or complete such work.

Source: Laws 1986, LB 474, § 12; Laws 1988, LB 594, § 5; Laws 2015, LB206, § 6.
Effective date August 30, 2015.

2-4613 District court action; procedures; order; appeal; failure to comply with order; effect.

In the district court action, the burden of proof shall be upon the district to show that soil erosion is occurring in excess of the applicable soil-loss tolerance level and that the landowner or operator has not established or maintained soil and water conservation practices or erosion or sediment control practices in compliance with the district's erosion and sediment control program. Upon receiving satisfactory proof, the court shall issue an order directing the owner or operator to comply with the administrative order previously issued by the district. The court may modify the administrative order if deemed necessary. Notice of the court order shall be given by either personal service or certified or registered mail to each person to whom the order is directed, who may, within thirty days from the date of the court order, appeal to the Court of Appeals. Any person who fails to comply with the court order issued within the time specified

in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and punished accordingly.

Source: Laws 1986, LB 474, § 13; Laws 1991, LB 732, § 10; Laws 2015, LB206, § 7.

Effective date August 30, 2015.

CHAPTER 3 AERONAUTICS

Article.

4. Regulation of Structures. 3-402 to 3-408.

ARTICLE 4 REGULATION OF STRUCTURES

Section

- 3-402. Terms, defined.
 3-407.01. Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.
 3-408. Violations; penalty.

3-402 Terms, defined.

As used in sections 3-401 to 3-409, unless the context otherwise requires:

(1) Structure means any manmade object which is built, constructed, projected, or erected upon, from, and above the surface of the earth, including, but not limited to, towers, antennas, buildings, wires, cables, and chimneys;

(2) Meteorological evaluation tower means an anchored structure, including all guy wires and accessory facilities, on which one or more meteorological instruments are mounted for the purpose of meteorological data collection;

(3) Obstruction means any structure which obstructs the air space required for the flight of aircraft and in the landing and taking off of aircraft at any airport or restricted landing area; and

(4) Person means any public utility, public district, or other governmental division or subdivision or any person, corporation, partnership, or limited liability company.

Source: Laws 1955, c. 7, § 2, p. 68; Laws 1993, LB 121, § 85; Laws 2015, LB469, § 5.

Operative date May 28, 2015.

3-407.01 Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.

(1) A meteorological evaluation tower, the height of which is at least fifty feet above the surface of the ground at point of installation, shall be marked according to subsection (2) of this section. This section applies to a meteorological evaluation tower that is located outside the corporate limits of a city or village.

(2) A meteorological evaluation tower described in subsection (1) of this section shall: (a) Be painted in seven equal-width and alternating bands of aviation orange and white beginning with orange at the top of the tower and ending with orange at the base; (b) have two or more spherical marker balls at least twenty-one inches in diameter that are aviation orange in color and attached to each outer guy wire connected to the tower with the top ball no

further than twenty feet from the top wire connection and the remaining ball or balls at or below the midpoint of the tower on the outer guy wires; and (c) have yellow safety sleeves installed on each outer guy wire extending at least fourteen feet above the anchor point of the guy wire.

(3) The owner of a meteorological evaluation tower subject to this section shall, not less than ten business days prior to erecting the tower, register with the Department of Aeronautics the name and address of the owner, the height and location of the tower, and any other information that the department deems necessary for aviation safety. The owner of a tower subject to this section shall also report the removal of the tower to the department not more than thirty business days after its removal. The department shall make the information received pursuant to this subsection available to the public within five business days.

(4) The owner of a meteorological evaluation tower described in subsection (1) of this section that was erected prior to May 28, 2015, and which is either lighted, marked with balls at least twenty-one inches in diameter, painted, or modified in some other manner so it is recognizable in clear air during daylight hours from a distance of not less than two thousand feet, shall mark the tower as required by subsection (2) of this section within two years after May 28, 2015, or at such time the tower is taken down for maintenance or other purposes, whichever comes first, except that the owner of a tower erected prior to May 28, 2015, which is not lighted, marked, painted, or modified as described in this subsection shall mark such tower as required by subsection (2) of this section within ninety days after May 28, 2015. The registration requirements of subsection (3) of this section shall be performed by the owner of a tower erected prior to May 28, 2015, within fifteen business days after May 28, 2015.

(5) A material failure to comply with the marking and registration requirements of this section shall be admissible as evidence of negligence on the part of an owner of a meteorological evaluation tower in an action in tort for property damage, bodily injury, or death resulting from an aerial collision with such unmarked or unregistered tower.

(6) The department may adopt and promulgate rules and regulations for carrying out the purposes of this section.

Source: Laws 2015, LB469, § 6.

Operative date May 28, 2015.

3-408 Violations; penalty.

Any person, firm, or corporation (1) violating any of the provisions of sections 3-401 to 3-409, (2) submitting false information in the application for a permit, (3) violating any rule or regulation adopted and promulgated by the Department of Aeronautics pursuant to sections 3-401 to 3-409, (4) failing to do and perform any act required by sections 3-401 to 3-409, or (5) violating the terms of any permit issued pursuant to sections 3-401 to 3-409, shall be guilty of a Class III misdemeanor. Each day any violation continues or any structure erected in violation of sections 3-401 to 3-409 shall continue in existence shall constitute a separate offense.

Source: Laws 1955, c. 7, § 8, p. 70; Laws 1977, LB 40, § 31; Laws 2015, LB469, § 7.

Operative date May 28, 2015.

CHAPTER 8

BANKS AND BANKING

Article.

1. General Provisions. 8-101 to 8-1,140.
3. Building and Loan Associations. 8-355.
11. Securities Act of Nebraska. 8-1106 to 8-1111.
14. Disclosure of Confidential Information. 8-1402.

ARTICLE 1

GENERAL PROVISIONS

Section

- 8-101. Terms, defined.
- 8-116. Banks; capital stock; amount required.
- 8-128. Capital stock; increase; decrease; notice; publication; denial by department, when.
- 8-153. Checks; preprinted information; cleared at par; exception.
- 8-157.01. Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties; department; enforcement action; limitation.
- 8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-101 Terms, defined.

For purposes of the Nebraska Banking Act, unless the context otherwise requires:

(1) Bank subsidiary corporation means a corporation which has a bank as a shareholder and which is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits. A bank subsidiary corporation is not to be considered a branch of its bank shareholder;

(2) Capital or capital stock means capital stock;

(3) Department means the Department of Banking and Finance;

(4) Director means the Director of Banking and Finance;

(5) Bank or banking corporation means any incorporated banking institution which was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under the act. Bank means any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans;

(6) Order includes orders transmitted by electronic transmission;

(7) Automatic teller machine means a machine established and located in the State of Nebraska, whether attended or unattended, which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, and from which electronic funds transfers may be initiated and at which banking transactions as defined in section 8-157.01 may be conducted. An unattended

automatic teller machine shall not be deemed to be a branch operated by a financial institution;

(8) Automatic teller machine surcharge means a fee that an operator of an automatic teller machine imposes upon a consumer for an electronic funds transfer, if such operator is not the financial institution that holds an account of such consumer from which the electronic funds transfer is to be made;

(9) Data processing center means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and either authorized or routed to a switch or other data processing center in order to enable the automatic teller machine to perform any function for which it is designed;

(10) Point-of-sale terminal means an information processing terminal which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device. A point-of-sale terminal is not a branch operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution;

(11) Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(12) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company;

(13) Financial institution employees includes parent holding company and affiliate employees;

(14) Switch means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and are routed and transmitted to a financial institution or data processing center, wherever located. A switch may also be a data processing center;

(15) Impulse means an electronic, sound, or mechanical impulse, or any combination thereof;

(16) Insolvent means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus;

(17) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto

Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia;

(18) Acquiring financial institution means any financial institution establishing a point-of-sale terminal; and

(19) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal.

Source: Laws 1963, c. 29, § 1, p. 134; Laws 1965, c. 27, § 1, p. 198; Laws 1967, c. 19, § 1, p. 117; Laws 1975, LB 269, § 1; Laws 1976, LB 561, § 1; Laws 1987, LB 615, § 1; Laws 1988, LB 375, § 1; Laws 1993, LB 81, § 1; Laws 1994, LB 611, § 1; Laws 1995, LB 384, § 1; Laws 1997, LB 137, § 1; Laws 1998, LB 1321, § 1; Laws 2000, LB 932, § 1; Laws 2002, LB 1089, § 1; Laws 2003, LB 131, § 1; Laws 2003, LB 217, § 1; Laws 2015, LB348, § 1.
Effective date May 14, 2015.

8-116 Banks; capital stock; amount required.

(1) Except as provided in subsection (2) of this section, a charter for a bank shall not be issued unless the corporation applying therefor has surplus and paid-up capital stock in an amount not less than the amount necessary for compliance with subsection (1) of section 8-702 for the insurance of deposits.

(2) The department shall have the authority to determine the minimum amount of paid-up capital stock and surplus required for any corporation applying for a bank charter, which amount shall not be less than the amount provided in subsection (1) of this section.

Source: Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 95; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(1), p. 102; R.S.1943, § 8-119; Laws 1959, c. 15, § 3, p. 132; Laws 1961, c. 15, § 1, p. 111; R.R.S.1943, § 8-119; Laws 1963, c. 29, § 16, p. 140; Laws 1967, c. 19, § 3, p. 118; Laws 1973, LB 164, § 4; Laws 1979, LB 220, § 3; Laws 1983, LB 252, § 2; Laws 2002, LB 1094, § 3; Laws 2008, LB851, § 2; Laws 2015, LB155, § 1.
Effective date March 19, 2015.

8-128 Capital stock; increase; decrease; notice; publication; denial by department, when.

The paid-in capital stock of any bank may be increased or decreased in the following manner: The stockholders at any regular meeting or at any special meeting duly called for such purpose shall by vote of those owning two-thirds of the capital stock authorize the president or cashier to notify the department of the proposed increase or reduction of paid-in capital stock, and a notice containing a statement of the amount of any proposed reduction of paid-in capital stock shall be published for two weeks in some newspaper published and of general circulation in the county where such bank is located. Reduction of paid-in capital stock shall be discretionary with the department, but shall be

denied if granting the same would reduce the paid-in capital stock below the requirements of the Nebraska Banking Act or would impair the security of the depositors. The bank shall notify the department when the proposed increase or decrease of the paid-in capital stock has been consummated.

Source: Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S. 1943, § 8-157; Laws 1961, c. 15, § 7, p. 113; R.R.S.1943, § 8-157; Laws 1963, c. 29, § 28, p. 145; Laws 1987, LB 2, § 8; Laws 1998, LB 1321, § 8; Laws 2015, LB155, § 2.
Effective date March 19, 2015.

8-153 Checks; preprinted information; cleared at par; exception.

All checks, unless sent to banks as special collection items, shall have preprinted the magnetically encoded routing and transit symbol of the bank and either the name of the maker or the magnetically encoded account number of the maker. Except for checks sent to banks as special collection items or checks presented for payment by the payee in person, all checks drawn on any bank organized under the laws of this state shall be cleared at par by the bank on which they are drawn. The term at par applies only to the settlement of checks between collecting and paying or remitting banks and does not apply to or prohibit a bank from deducting a fee from the face amount of the check for paying the check if the check is presented to the bank by the payee in person.

Source: Laws 1945, c. 11, § 1, p. 110; R.R.S.1943, § 8-163.01; Laws 1963, c. 29, § 53, p. 157; Laws 1979, LB 269, § 1; Laws 2015, LB155, § 3.
Effective date March 19, 2015.

8-157.01 Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties; department; enforcement action; limitation.

(1) Any establishing financial institution may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transferring funds from checking accounts to savings accounts, transferring funds from savings accounts to checking accounts, transferring funds from either checking accounts and savings accounts to accounts of other customers, transferring payments from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, account balance inquiry, and any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public, may be conducted. Any automatic teller machine owned by a nonfinancial institution third party shall be sponsored by an establishing financial institution. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution the automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines.

(3)(a) Beginning November 1, 2016, (i) all automatic teller machines shall be made available on a nondiscriminating basis for use by Nebraska customers of a user financial institution and (ii) all Nebraska automatic teller machine transactions initiated by Nebraska customers of a user financial institution shall be made on a nondiscriminating basis.

(b) It shall not be deemed discrimination if (i) an automatic teller machine does not offer the same transaction services as other automatic teller machines, (ii) there are no automatic teller machine usage fees charged between affiliate financial institutions for the use of automatic teller machines, (iii) the automatic teller machine usage fees of an establishing financial institution that authorizes and directly or indirectly routes Nebraska automatic teller machine transactions to multiple switches, all of which comply with the requirements of subdivision (3)(d) of this section, differ solely upon the fact that the automatic teller machine usage fee schedules of such switches differ from one another, (iv) automatic teller machine usage fees differ based upon whether the transaction initiated at an automatic teller machine is subject to a surcharge or provided on a surcharge-free basis, (v) the manner in which an establishing financial institution authorizes and directly or indirectly routes Nebraska automatic teller machine transactions results in the same automatic teller machine usage fees for all user financial institutions for essentially the same service routed over the same switch, or (vi) the automatic teller machines established or sponsored by an establishing financial institution are made available for use by Nebraska customers of any user financial institution which agrees to pay the automatic teller machine usage fee and which conforms to the operating rules and technical standards established by the switch to which a Nebraska automatic teller machine transaction is directly or indirectly routed.

(c) The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that the automatic teller machine is not made available on a nondiscriminating basis or that Nebraska automatic teller machine transactions initiated at such automatic teller machine are not made on a nondiscriminating basis.

(d) A switch (i) shall provide to all financial institutions that have a main office or approved branch located in the State of Nebraska and that conform to the operating rules and technical standards established by the switch an equal opportunity to participate in the switch for the use of and access thereto; (ii) shall implement the same automatic teller machine usage fee for all user financial institutions for essentially the same service; (iii) shall be capable of operating to accept and route Nebraska automatic teller machine transactions, whether receiving data from an automatic teller machine, an establishing financial institution, or a data processing center; and (iv) shall be capable of being directly or indirectly connected to every data processing center for any automatic teller machine.

(e) The director, upon notice and after a hearing, may terminate or suspend the operation of any switch with respect to all Nebraska automatic teller machine transactions if he or she determines that the switch is not being operated in the manner required under subdivision (3)(d) of this section.

(f) Subject to the requirement for a financial institution to comply with this subsection, no user financial institution or establishing financial institution shall be required to become a member of any particular switch.

(4) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2015. Such notice shall appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state by a financial institution, a group of two or more financial institutions, or a combination of a financial institution or financial institutions and a third party or parties. Such parties may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises.

(7) Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at automatic teller machines or point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8)(a) Beginning September 1, 2015, and thereafter annually by September 1, any entity operating as a switch in Nebraska prior to September 1, 2015, regardless of whether the switch had been approved by the department, shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska.

(b) On or after September 1, 2015, any entity intending to operate in Nebraska as a switch shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska. Such notice shall be filed at least thirty days prior to the date on which the switch commences operations, and thereafter annually by September 1.

(9) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(10) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or foreign financial institutions or to allow customers of out-of-state financial institutions or foreign financial institutions to use its automatic teller machines. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program or usage fees charged for the use of its automatic teller machines by customers of out-of-state financial institutions or foreign financial institutions shall not be considered for

purposes of determining (a) if an automatic teller machine has been made available or Nebraska automatic teller machine transactions have been made on a nondiscriminating basis for use by Nebraska customers of a user financial institution or (b) if a switch complies with subdivision (3)(d) of this section.

(11) An agreement to operate or share an automatic teller machine may not prohibit, limit, or restrict the right of the operator or owner of the automatic teller machine to charge a customer conducting a transaction using an account from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law.

(12) Switch fees shall not be subject to this section or be regulated by the department.

(13) Nothing in this section shall prevent a group of two or more credit unions, each of which has a main chartered office or an approved branch located in the State of Nebraska, from participating in a credit union service organization organized on or before January 1, 2015, for the purpose of owning automatic teller machines, provided that all participating credit unions have an ownership interest in the credit union service organization and that the credit union service organization has an ownership interest in each of the participating credit unions' automatic teller machines. Such participation and any automatic teller machine usage fees associated with Nebraska automatic teller machine transactions initiated by customers of participating credit unions at such automatic teller machines shall not be considered for purposes of determining if such automatic teller machines have been made available on a nondiscriminating basis or if Nebraska automatic teller machine transactions initiated at such automatic teller machines have been made on a nondiscriminating basis, provided that all Nebraska automatic teller machine transactions initiated by customers of participating credit unions result in the same automatic teller machine usage fees for essentially the same service routed over the same switch.

(14)(a) Except for any violation of this subsection, the department shall take no enforcement action under this section between May 14, 2015, and November 1, 2016, with respect to access to automatic teller machines, Nebraska automatic teller machine usage fees, or any agreements relating to Nebraska automatic teller machine usage fees which existed on May 14, 2015, except for changes in automatic teller machine usage fees announced prior to May 14, 2015.

(b) Nebraska automatic teller machine usage fees or agreements relating to Nebraska automatic teller machine usage fees in effect on May 14, 2015, shall remain unchanged until April 1, 2016, except for changes in automatic teller machine usage fees announced prior to May 14, 2015.

(c) There shall be a moratorium on the implementation of any agreement with new members relating to Nebraska automatic teller machine usage fees between May 14, 2015, and April 1, 2016, except for changes in automatic teller machine usage fees announced prior to May 14, 2015.

(d) Any agreement implemented on or after April 1, 2016, relating to Nebraska automatic teller machine usage fees shall comply with subsection (3) of this section.

(e) Commencing November 1, 2016, Nebraska automatic teller machine usage fees and any agreements relating to Nebraska automatic teller machine usage fees shall comply with subsection (3) of this section.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(c) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(d) Automatic teller machine usage fee means any per transaction fee established by a switch or otherwise established on behalf of an establishing financial institution and collected from the user financial institution and paid to the establishing financial institution for the use of the automatic teller machine. An automatic teller machine usage fee shall not include switch fees;

(e) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(f) Essentially the same service means the same Nebraska automatic teller machine transaction offered by an establishing financial institution irrespective of the user financial institution, the Nebraska customer of which initiates the Nebraska automatic teller machine transaction. A Nebraska automatic teller machine transaction that is subject to a surcharge is not essentially the same service as the same banking transaction for which a surcharge is not imposed;

(g) Establishing financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska that establishes or sponsors an automatic teller machine or any out-of-state financial institution that establishes or sponsors an automatic teller machine;

(h) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the department, the United States, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a subsidiary of any such entity;

(i) Foreign financial institution means a financial institution located outside the United States;

(j) Nebraska automatic teller machine transaction means a banking transaction as defined in subsection (1) of this section which is (i) initiated at an automatic teller machine established in whole or in part or sponsored by an establishing financial institution, (ii) for an account of a Nebraska customer of a user financial institution, and (iii) processed through a switch regardless of whether it is routed directly or indirectly from an automatic teller machine;

(k) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer;

(l) Sponsoring an automatic teller machine means the acceptance of responsibility by an establishing financial institution for compliance with all provisions

of law governing automatic teller machines and Nebraska automatic teller machine transactions in connection with an automatic teller machine owned by a nonfinancial institution third party;

(m) Switch fee means a fee established by a switch and assessed to a user financial institution or to an establishing financial institution other than an automatic teller machine usage fee; and

(n) User financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska which avails itself of and provides its customers with automatic teller machine services.

Source: Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2; Laws 2009, LB75, § 1; Laws 2009, LB327, § 4; Laws 2013, LB100, § 1; Laws 2015, LB348, § 2. Effective date May 14, 2015.

8-1,140 Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2015, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6; Laws 2008, LB851, § 7; Laws 2009, LB327, § 6; Laws 2010, LB890, § 6; Laws 2011, LB74, § 1; Laws 2012, LB963, § 4; Laws 2013, LB213, § 5; Laws 2014, LB712, § 1; Laws 2015, LB286, § 1. Effective date March 6, 2015.

ARTICLE 3

BUILDING AND LOAN ASSOCIATIONS

Section

8-355. Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-355 Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association

incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2015, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1971, LB 185, § 1; Laws 1972, LB 1288, § 1; Laws 1973, LB 351, § 1; Laws 1974, LB 784, § 1; Laws 1975, LB 201, § 1; Laws 1976, LB 763, § 2; Laws 1977, LB 224, § 1; Laws 1978, LB 717, § 6; Laws 1979, LB 154, § 2; Laws 1980, LB 865, § 1; Laws 1981, LB 71, § 1; Laws 1982, LB 646, § 1; Laws 1983, LB 144, § 1; Laws 1984, LB 923, § 1; Laws 1985, LB 128, § 1; Laws 1986, LB 1052, § 1; Laws 1987, LB 115, § 1; Laws 1988, LB 858, § 1; Laws 1989, LB 207, § 1; Laws 1990, LB 1016, § 1; Laws 1991, LB 98, § 1; Laws 1992, LB 470, § 4; Laws 1992, LB 985, § 1; Laws 1993, LB 288, § 1; Laws 1994, LB 876, § 1; Laws 1995, LB 41, § 1; Laws 1996, LB 949, § 1; Laws 1997, LB 35, § 1; Laws 1998, LB 1321, § 67; Laws 1999, LB 396, § 12; Laws 2000, LB 932, § 16; Laws 2001, LB 53, § 6; Laws 2002, LB 957, § 8; Laws 2003, LB 217, § 11; Laws 2004, LB 999, § 4; Laws 2005, LB 533, § 19; Laws 2006, LB 876, § 13; Laws 2007, LB124, § 7; Laws 2008, LB851, § 11; Laws 2009, LB327, § 9; Laws 2010, LB890, § 8; Laws 2011, LB74, § 2; Laws 2012, LB963, § 11; Laws 2013, LB213, § 8; Laws 2014, LB712, § 2; Laws 2015, LB286, § 2.

Effective date March 6, 2015.

ARTICLE 11

SECURITIES ACT OF NEBRASKA

Section

- 8-1106. Registration by coordination.
 8-1108.02. Federal covered security; filing; director; powers; sales; requirements; fees; consent to service of process.
 8-1111. Transactions exempt from registration.

8-1106 Registration by coordination.

(1) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

- (a) One copy of the prospectus filed under the Securities Act of 1933 together with all amendments thereto;
- (b) The amount of securities to be offered in this state;
- (c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(e) If the director by rule or otherwise requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the director requests, any other information or copies of any other documents filed under the Securities Act of 1933; and

(g) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(3) A registration statement under this section shall automatically become effective at the moment the federal registration statement or qualification becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under the Securities Act of 1933, as amended, or under section 8-1109;

(b) The registration statement has been on file with the director for at least ten days; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been filed and the offering is made within those limitations. The registrant shall promptly notify the director by facsimile transmission or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. Price amendment shall mean the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there has been compliance with this subsection, if he or she promptly notifies the registrant by telephone or telegram and promptly confirms by letter or telegram when he or she notifies by telephone of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order shall be void as of the time of its entry. The director may by rule or otherwise waive either or both of the conditions specified in subsections (2) and (3) of this section. If the federal registration statement or qualification becomes effective before all these conditions have been satisfied and they are not waived, the registration statement shall automatically become effective as soon as all the conditions have been satisfied.

Source: Laws 1965, c. 549, § 6, p. 1776; Laws 1967, c. 29, § 1, p. 142; Laws 1977, LB 263, § 3; Laws 1988, LB 795, § 3; Laws 1993, LB 216, § 4; Laws 2015, LB252, § 1.
Effective date August 30, 2015.

8-1108.02 Federal covered security; filing; director; powers; sales; requirements; fees; consent to service of process.

(1) The director, by rule and regulation or order, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a filing fee as prescribed by section 8-1108.03;

(b) After the initial offer of such federal covered security in this state, all documents which are part of any amendment to the federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(c) A sales report of the total amount of such federal covered securities offered or sold in this state, together with the filing fee prescribed by section 8-1108.03.

(2)(a) The director, by rule and regulation or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) of the Securities Act of 1933 together with a filing fee of two hundred dollars.

(b) The director, by rule and regulation or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(4) of the Securities Act of 1933 together with a filing fee of two hundred dollars. In addition, for federal covered securities under section 18(b)(4)(E) of the Securities Act of 1933, the director may also require the submission of a consent to service of process signed by the issuer and may require that such filing be made no later than fifteen days after the first sale of such federal covered security in this state.

(c) In connection with filings made pursuant to subdivisions (a) and (b) of this subsection, the director, by rule and regulation or order, may require the filing of all documents which are part of any amendment which the issuer files with the Securities and Exchange Commission.

(3) The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that (a) the order is in the public interest and (b) there is a failure to comply with any condition established under this section or with any other applicable provision of the Securities Act of Nebraska.

(4) The director, by rule and regulation or order, may waive any or all of the provisions of this section, except that the director does not have the authority to waive the payment of fees as required by this section.

(5) No person may bring an action pursuant to section 8-1118 based on the failure of an issuer to file any notice or pay any fee required by this section.

(6) All federal covered securities offered or sold in this state must be sold through a registered agent of a broker-dealer registered under the Securities Act of Nebraska or by persons duly exempted or excluded from such registra-

tion, except that this subsection shall not apply to the offer or sale of a federal covered security under section 18(b)(4)(E) of the Securities Act of 1933 if no commission or other remuneration is paid directly or indirectly for soliciting any prospective buyer.

Source: Laws 1997, LB 335, § 9; Laws 2013, LB214, § 4; Laws 2015, LB252, § 2.

Effective date August 30, 2015.

8-1111 Transactions exempt from registration.

Except as provided in this section, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) The security is sold at a price reasonably related to the current market price of the security;

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

(A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or

(C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule or regulation require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as the act existed on January 1, 2015;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, to an individual accredited investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. For purposes of this subdivision, the term "individual accredited investor" means (a) any

director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (b) any manager of a limited liability company that is the issuer of the securities being offered or sold, (c) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, excluding the value of the primary residence of such person, or (d) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9)(a) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (i) the seller reasonably believes that all the buyers are purchasing for investment, (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (iii) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (iv) no general or public advertisements or solicitations are made.

(b) If a seller (i) makes sales pursuant to this subdivision for five consecutive twelve-month periods or (ii) makes sales of at least one million dollars from an offering or offerings pursuant to this subdivision, the seller shall, within ninety days after the earlier of either such occurrence, file with the director audited financial statements and a sales report which lists the names and addresses of all purchasers and holders of the seller's securities and the amount of securities held by such persons. Subsequent thereto, such seller shall file audited financial statements and sales reports with the director each time an additional one million dollars in securities is sold pursuant to this subdivision or after the elapse of each additional sixty-month period during which sales are made pursuant to this subdivision;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public

proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by an agricultural cooperative formed as a corporation under section 21-1301 or 21-1401 if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. For purposes of this subdivision, not involving a public offering means any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment;

(17) The issuance of any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment

fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing;

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation;

(21) Any transaction by a person who is an organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 involving an offering of interests in a fund described in section 3(c)(10)(B) of the Investment Company Act of 1940 solely to persons who are organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 when (a) there is no general or public advertising or solicitation, (b) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (c) any such transaction is effected by a trustee, director, officer, employee, or volunteer of the seller who is either a volunteer or is engaged in the overall fundraising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of interests sold in the fund;

(22) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(a) Sales of such securities are made only to the following purchasers:

(i) A natural person who, either individually or jointly with the person's spouse, (A) has a minimum net worth of two hundred fifty thousand dollars and had taxable income in excess of one hundred twenty-five thousand dollars in

each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year or (B) has a minimum net worth of five hundred thousand dollars. Net worth shall be determined exclusive of home, home furnishings, and automobiles;

(ii) A corporation, partnership, or other organization specifically formed for the purpose of acquiring securities offered by the issuer in reliance upon this exemption if each equity owner of the corporation, partnership, or other organization is a person described in subdivision (22)(a)(i) of this section;

(iii) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons described in subdivision (22)(a)(i) of this section; or

(iv) An organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, or a corporation, Massachusetts or similar business trust, or partnership with total assets in excess of five million dollars according to its most recent audited financial statements;

(b) The amount of the investment of any purchaser, except a purchaser described in subdivision (a)(ii) of this subdivision, does not exceed five percent of the net worth, as determined by this subdivision, of that purchaser;

(c) Each purchaser represents that the purchaser is purchasing for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security;

(d)(i) Each purchaser receives, on or before the date the purchaser remits consideration pursuant to the purchase agreement, the following information in writing:

(A) The name, principal business and mailing addresses, and telephone number of the issuer;

(B) The suitability standards for prospective purchasers as set forth in subdivision (a) of this subdivision;

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;

(D) A brief description of the business of the issuer;

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the initial issuance of the securities described in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than one hundred twenty days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;

(F) The names of all directors, officers, partners, members, or trustees of the issuer;

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (I)

revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, ten percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (II) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (III) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (IV) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than ten years old;

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund;

(I) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;

(J) A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and

(K) Any other information as may be prescribed by rule and regulation of the director; and

(ii) The purchaser receives in writing at least five business days prior to closing the transaction:

(A) The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;

(B) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;

(C) The insurance policy number, issue date, and type;

(D) If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;

(E) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;

(F) That the insurance policy is beyond the state statute for contestability and the reason therefor;

(G) The insurance policy premiums and terms of premium payments;

(H) The amount of the purchaser's money that will be set aside to pay premiums;

(I) The name, address, and telephone number of the person who will be the insurance policyowner and the person who will be responsible for paying premiums;

(J) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known; and

(K) Any other information as may be prescribed by rule and regulation of the director;

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

(f) A notice of the issuer's intent to sell securities pursuant to this subdivision, signed by a duly authorized officer of the issuer and notarized, together with a filing fee of two hundred dollars, is filed with the Department of Banking and Finance before any offers or sales of securities are made under this subdivision. Such notice shall include:

(i) The issuer's name, the issuer's type of organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(ii) A consent to service of process; and

(iii) An audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the notice prescribed in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles and shall be examined according to generally accepted auditing standards. If the date of the audit report is more than one hundred twenty days before the date of the notice prescribed in this subdivision, the issuer shall provide unaudited interim financial statements;

(g) No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered agent of a registered broker-dealer or registered issuer-dealer; and

(h) At least ten days before use within this state, the issuer files with the department all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state;

(23) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents when:

(a) The proceeds from all sales of securities by the issuer in any two-year period do not exceed two hundred fifty thousand dollars and at least eighty percent of the proceeds are used in Nebraska;

(b) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(c) The issuer, any partner or limited liability company member of the issuer, any officer, director, or any person occupying a similar status of the issuer, any person performing similar functions for the issuer, or any person holding a direct or indirect ownership interest in the issuer or in any way a beneficial interest in such sale of securities of the issuer, has not been:

(i) Found by a final order of any state or federal administrative agency or a court of competent jurisdiction to have violated any provision of the Securities Act of Nebraska or a similar act of any other state or of the United States;

(ii) Convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) Found by any state or federal administrative agency or court of competent jurisdiction to have engaged in fraud or deceit, including, but not limited to, making an untrue statement of a material fact or omitting to state a material fact; or

(iv) Temporarily or preliminarily restrained or enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the Securities and Exchange Commission;

(d)(i) At least fifteen business days prior to the offer or sale, the issuer files a notice with the director, which notice shall include:

(A) The name, address, telephone number, and email address of the issuer;

(B) The name and address of each person holding direct or indirect ownership or beneficial interest in the issuer;

(C) The amount of the offering; and

(D) The type of security being offered, the manner in which purchasers will be solicited, and a statement made upon oath or affirmation that the conditions of this exemption have been or will be met.

(ii) Failure to give such notice may be cured by an order issued by the director in his or her discretion;

(e) Prior to payment of consideration for the securities, the offeree receives a written disclosure statement containing (i) a description of the proposed use of the proceeds of the offering; (ii) the name of each partner or limited liability company member of the issuer, officer, director, or person occupying a similar

status of the issuer or performing similar functions for the issuer; and (iii) the financial condition of the issuer;

(f) The purchaser signs a subscription agreement in which the purchaser acknowledges that he or she:

(i) Has received the written disclosure statement;

(ii) Understands the investment involves a high level of risk; and

(iii) Has the financial resources to withstand the total loss of the money invested; and

(g) The issuer, within thirty days after the completion of the offering, files with the Department of Banking and Finance a statement indicating the number of investors, the total dollar amount raised, and the use of the offering proceeds; or

(24)(a) An offer or a sale of a security made after August 30, 2015, by an issuer if the offer or sale is conducted in accordance with all the following requirements:

(i) The issuer of the security is a business entity organized under the laws of Nebraska and authorized to do business in Nebraska;

(ii) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. 77c(a)(11), and Rule 147 adopted under the Securities Act of 1933, 17 C.F.R. 230.147;

(iii) Except as provided in subdivision (c) of this subdivision, the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subdivision, excluding sales to any accredited investor, does not exceed the following amount:

(A) If the issuer has not undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, one million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision; or

(B) If the issuer has undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, two million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision;

(iv) The issuer does not accept more than five thousand dollars from any single purchaser except that such limitation shall not apply to an accredited investor;

(v) Unless waived by written consent by the director, not less than ten days before the commencement of an offering of securities in reliance on the exemption under this subdivision, the issuer must do all the following:

(A) Make a notice filing with the Department of Banking and Finance on a form prescribed by the director;

(B) Pay a filing fee of two hundred dollars. However, no filing fee is required to file amendments to the form;

(C) Provide the director a copy of the disclosure document to be provided to prospective investors under subdivision (a)(xi) of this subdivision;

(D) Provide the director a copy of an escrow agreement with a bank, regulated trust company, savings bank, savings and loan association, or credit union authorized to do business in Nebraska in which the issuer will deposit the investor funds or cause the investor funds to be deposited. The bank, regulated trust company, savings bank, savings and loan association, or credit union in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person;

(E) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement; and

(F) An investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement;

(vi) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. 80a-3, an entity that would be an investment company but for the exclusions provided in section 3(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c), or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m or 15 U.S.C. 78o(d);

(vii) The issuer informs all prospective purchasers of securities offered under an exemption under this subdivision that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION(e) OF SEC RULE 147 (17 C.F.R. 230.147(e)) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.;

(viii) The issuer requires each purchaser to certify in writing or electronically as follows:

I understand and acknowledge that I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss. This offering has not been reviewed or approved by any state or federal securities commission, department, or division or other regulatory authority and no such person or authority

has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering are illiquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.;

(ix) The issuer obtains from each purchaser of a security offered under an exemption under this subdivision evidence that the purchaser is a resident of Nebraska and, if applicable, is an individual accredited investor;

(x) All payments for purchase of securities offered under an exemption under this subdivision are directed to and held by the financial institution specified in subdivision (a)(v)(D) of this subdivision. The director may request from the financial institutions information necessary to ensure compliance with this section. This information is not a public record and is not available for public inspection;

(xi) The issuer of securities offered under an exemption under this subdivision provides a disclosure document to each prospective investor at the time the offer of securities is made to the prospective investor that contains all the following:

(A) A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(B) The identity of all persons owning more than twenty percent of the ownership interests of any class of securities of the company;

(C) The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience;

(D) The terms and conditions of the securities being offered and of any outstanding securities of the company; the minimum and maximum amount of securities being offered, if any; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered;

(E) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any portal operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;

(F) For each person identified as required in subdivision (a)(xi)(E) of this subdivision, a description of the consideration being paid to the person for such assistance;

(G) A description of any litigation, legal proceedings, or pending regulatory action involving the company or its management;

(H) The names and addresses of each portal operator that will be offering or selling the issuer's securities under an exemption under this subdivision;

(I) The Uniform Resource Locator for each funding portal that will be used by the portal operator to offer or sell the issuer's securities under an exemption under this subdivision; and

(J) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering;

(xii) The offering or sale exempted under this subdivision is made exclusively through one or more funding portals and each funding portal is subject to the following:

(A) Before any offer or sale of securities, the issuer must provide to the portal operator evidence that the issuer is organized under the laws of Nebraska and is authorized to do business in Nebraska;

(B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision, the portal operator must register with the Department of Banking and Finance by filing a statement, accompanied by a two-hundred-dollar filing fee, that includes the following information:

(I) Documentation which demonstrates that the portal operator is a business entity and authorized to do business in Nebraska;

(II) A representation that the funding portal is being used to offer and sell securities pursuant to the exemption under this subdivision; and

(III) The identity and location of, and contact information for, the portal operator;

(C) The portal operator is not required to register as a broker-dealer if all of the following apply with respect to the funding portal and its portal operator:

(I) It does not offer investment advice or recommendations;

(II) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the funding portal;

(III) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the funding portal;

(IV) It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities;

(V) The fee it charges an issuer for an offering of securities on the funding portal is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the funding portal, or a combination of the fixed and variable amounts;

(VI) It does not identify, promote, or otherwise refer to any individual security offered on the funding portal in any advertising for the funding portal;

(VII) It does not engage in any other activities that the Department of Banking and Finance, by rule, regulation, or order, determines are prohibited of the funding portal; and

(VIII) Neither the portal operator, nor any director, executive officer, general partner, managing member, or other person with management authority over the portal operator, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d)(1), that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d), from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(a) to 17 C.F.R. 230.506(c). However, this subdivision does not apply if both of the following are met:

(1) On a showing of good cause and without prejudice to any other action by the director, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(2) The portal operator establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants;

(D) If any change occurs that affects the funding portal's registration exemption, the portal operator must notify the Department of Banking and Finance within thirty days after the change occurs;

(E) A registered broker-dealer who also serves as a portal operator must register with the Department of Banking and Finance as a portal operator pursuant to subdivision (a)(xii)(B) of this subdivision, except that the fee for registration shall be waived;

(F) The issuer and the portal operator must maintain records of all offers and sales of securities effected through the funding portal and must provide ready access to the records to the Department of Banking and Finance, upon request. The records of a portal operator under this subdivision are subject to the reasonable periodic, special, or other audits or inspections by a representative of the director, in or outside Nebraska, as the director considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The director may copy, and remove for audit or inspection copies of, all records the director reasonably considers necessary or appropriate to conduct the audit or inspection. The director may assess a reasonable charge for conducting an audit or inspection under this subdivision;

(G) The portal operator shall limit web site access to the offer or sale of securities to only Nebraska residents;

(H) The portal operator shall not hold, manage, possess, or handle investor funds or securities; and

(I) The portal operator may not be an investor in any Nebraska offering under this subdivision.

(b) An issuer of a security, the offer and sale of which is exempt under this subdivision, shall provide, free of charge, a quarterly report to the issuer's investors until no securities issued under an exemption under this subdivision

are outstanding. An issuer may satisfy the reporting requirement of this subdivision by making the information available on a funding portal if the information is made available within forty-five days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each quarterly report under this subdivision with the Department of Banking and Finance and, if the quarterly report is made available on a funding portal, the issuer shall also provide a written copy of the report to any investor upon request. The report must contain all the following:

(i) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(c) An offer or a sale under this subdivision to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitations in subdivision (a)(iii) of this subdivision.

(d) The exemption under this subdivision may not be used in conjunction with any other exemption under the Securities Act of Nebraska, except for offers and sales to individuals identified in the disclosure document, during the immediately preceding twelve-month period.

(e) The exemption under this subdivision does not apply if an issuer or any director, executive officer, general partner, managing member, or other person with management authority over the issuer, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d)(1), that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d), from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(a) to 17 C.F.R. 230.506(c). However, this subdivision does not apply if both of the following are met:

(i) On a showing of good cause and without prejudice to any other action by the director, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(ii) The issuer establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(f) For purposes of this subdivision:

(i) Accredited investor means a bank, a savings institution, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust or other financial institution or institutional buyer, an individual accredited investor, or a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(ii) Funding portal means an Internet web site that is operated by a portal operator for the offer and sale of securities pursuant to this subdivision;

(iii) Individual accredited investor means (A) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (B) any manager of a limited liability company that is the issuer of the securities being offered or sold, (C) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, excluding the value of the primary residence of such person, or (D) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year; and

(iv) Portal operator means an entity authorized to do business in this state which operates a funding portal and has registered with the Department of Banking and Finance as required by this subdivision.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen business days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order may operate retroactively. No person may be considered to have violated the provisions of the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under the act, the burden of proving an exemption from a definition shall be upon the person claiming it.

Source: Laws 1965, c. 549, § 11, p. 1787; Laws 1973, LB 167, § 6; Laws 1977, LB 263, § 5; Laws 1978, LB 760, § 2; Laws 1980, LB 496, § 1; Laws 1986, LB 909, § 11; Laws 1987, LB 93, § 1; Laws 1989, LB 60, § 3; Laws 1990, LB 956, § 10; Laws 1991, LB 305, § 5; Laws 1992, LB 758, § 2; Laws 1993, LB 216, § 7; Laws 1994, LB 1241, § 1; Laws 1995, LB 96, § 1; Laws 1996, LB 1053, § 9; Laws 1997, LB 335, § 7; Laws 2000, LB 932, § 20; Laws 2001, LB 52, § 44; Laws 2002, LB 957, § 9; Laws 2006, LB 876, § 20; Laws 2010, LB814, § 1; Laws 2011, LB76, § 3; Laws 2013, LB205, § 2; Laws 2013, LB214, § 6; Laws 2015, LB226, § 1. Effective date August 30, 2015.

ARTICLE 14

DISCLOSURE OF CONFIDENTIAL INFORMATION

Section

8-1402. Provide records or information; costs.

8-1402 Provide records or information; costs.

(1) Any person, party, agency, or organization requesting disclosure of records or information pursuant to section 8-1401 shall pay the costs of providing such records or information unless:

(a) The request for disclosure is made pursuant to subdivision (1)(a) of section 8-1401 and a Nebraska Supreme Court rule provides for the method of payment;

(b) The request for disclosure is made pursuant to subdivision (1)(d) or (1)(e) of section 8-1401;

(c) Otherwise ordered by a court of competent jurisdiction; or

(d) The person making the disclosure waives any or all of the costs.

(2)(a) The requesting person, party, agency, or organization shall pay the actual cost of providing the records or information.

(b) For purposes of this subsection, actual cost means:

(i) Search and processing costs, including the total amount of personnel direct time incurred in locating and retrieving, reproducing, packaging, and preparing records or information for shipment or delivery. Search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies;

(ii) Reproduction costs incurred in making copies of records or information requested. The rate for reproduction costs for making copies of requested records or information shall be the usual rate charged by the person making the disclosure to its customers for reproducing copies, including copies produced by reader-printer reproduction processes. Photographs, films, and other materials shall be reimbursed at actual cost; and

(iii) Transportation costs, including transport of personnel to locate and retrieve the records or information requested and including all other reasonably necessary costs to convey the records or information.

(3) No person authorized to receive payment pursuant to subsection (1) of this section has an obligation to provide any records or information pursuant to section 8-1401 until assurances are received that the costs due under this section will be paid, except for requests made pursuant to subdivisions (1)(d), (1)(e), (1)(f), and (1)(g) of section 8-1401.

Source: Laws 1979, LB 216, § 2; Laws 1995, LB 384, § 11; Laws 1998, LB 1104, § 2; Laws 2002, LB 957, § 13; Laws 2003, LB 156, § 2; Laws 2014, LB788, § 4; Laws 2015, LB155, § 4.
Effective date March 19, 2015.



CHAPTER 9

BINGO AND OTHER GAMBLING

Article.

2. Bingo. 9-262.
3. Pickle Cards. 9-352.
4. Lotteries and Raffles. 9-434.
6. County and City Lotteries. 9-652.
7. Gift Enterprises. 9-701.
8. State Lottery. 9-812.

ARTICLE 2

BINGO

Section

9-262. Violations; penalties; enforcement; venue.

9-262 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person, licensee, or permittee, or employee or agent thereof, who violates any provision of the Nebraska Bingo Act, or who causes, aids, abets, or conspires with another to cause any person, licensee, or permittee, or any employee or agent thereof, to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Bingo Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of the state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operation except as authorized by the Nebraska Bingo Act or any rules or regulations adopted and promulgated pursuant to such act;

(b) Knowingly filing a false report under the Nebraska Bingo Act; or

(c) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of bingo activity.

(3) Intentionally employing or possessing any device to facilitate cheating in a bingo game or using any fraudulent scheme or technique in connection with any bingo game is a violation of the Nebraska Bingo Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the Nebraska Bingo Act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Bingo Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the Nebraska Bingo Act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1978, LB 351, § 47; Laws 1983, LB 259, § 32; Laws 1984, LB 949, § 43; Laws 1985, LB 408, § 16; R.S.Supp., 1985, § 9-170; Laws 1986, LB 1027, § 63; Laws 1987, LB 523, § 1; Laws 1988, LB 295, § 33; Laws 1995, LB 344, § 9; Laws 1997, LB 248, § 8; Laws 2015, LB605, § 1.
Effective date August 30, 2015.

ARTICLE 3 PICKLE CARDS

Section

9-352. Violations; penalties; enforcement; venue.

9-352 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person or licensee, or employee or agent thereof, who violates any provision of the Nebraska Pickle Card Lottery Act, or who causes, aids, abets, or conspires with another to cause any person or licensee or any employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked. Such matters may also be referred to any other state licensing agencies for appropriate action.

(2) Each of the following violations of the Nebraska Pickle Card Lottery Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter;

(b) Making or receiving payment of a portion of the purchase price of pickle cards by a seller of pickle cards to a buyer of pickle cards to induce the purchase of pickle cards or to improperly influence future purchases of pickle cards;

(c) Using bogus, counterfeit, or nonopaque pickle cards, pull tabs, break opens, punchboards, jar tickets, or any other similar card, board, or ticket or substituting or using any pickle cards, pull tabs, or jar tickets that have been marked or tampered with;

(d) Knowingly filing a false report under the Nebraska Pickle Card Lottery Act;

(e) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery by the sale of pickle cards; or

(f) Knowingly selling or distributing or knowingly receiving with intent to sell or distribute pickle cards or pickle card units without first obtaining a license in accordance with the Nebraska Pickle Card Lottery Act pursuant to section 9-329, 9-329.03, 9-330, or 9-332.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery by the sale of pickle cards or use of any fraudulent scheme or technique in connection with any lottery by the sale of pickle cards is a violation of the Nebraska Pickle Card Lottery Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Pickle Card Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1986, LB 1027, § 118; Laws 1987, LB 523, § 2; Laws 1988, LB 1232, § 50; Laws 1995, LB 344, § 23; Laws 1997, LB 248, § 20; Laws 2015, LB605, § 2.
Effective date August 30, 2015.

ARTICLE 4
LOTTERIES AND RAFFLES

Section

9-434. Violations; penalties; enforcement; venue.

9-434 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person, licensee, or permittee, or employee or agent thereof, who violates any provision of the Nebraska Lottery and Raffle Act, or who causes, aids, abets, or conspires with another to cause any person, licensee, or permittee or employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Lottery and Raffle Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official or employee or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities authorized under Chapter 9 in consideration for obtaining any license, authorization, permission, or privileges to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter; or

(b) Knowingly filing a false report under the Nebraska Lottery and Raffle Act.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery or raffle or using any fraudulent scheme or technique in connection with any lottery or raffle is a violation of the Nebraska Lottery and Raffle Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Lottery and Raffle Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1986, LB 1027, § 155; Laws 1987, LB 523, § 3; Laws 1995, LB 344, § 28; Laws 1997, LB 248, § 27; Laws 2015, LB605, § 3. Effective date August 30, 2015.

ARTICLE 6
COUNTY AND CITY LOTTERIES

Section

9-652. Violations; penalties; enforcement; venue.

9-652 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person or licensee, or employee or agent thereof, who knowingly or intentionally violates any provision of the Nebraska County and City Lottery Act, or who causes, aids, abets, or conspires with another to cause any person or licensee or any employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state or any agencies or political subdivisions of this state any compensation or reward or share of the money for property paid or received through gambling activities regulated under the act in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under the act or any rules and regulations adopted and promulgated pursuant to such act;

(b) Knowingly filing a false report under the act; or

(c) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery or using any fraudulent scheme or technique in connection with any lottery is a violation of the act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such device, scheme, or technique is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such device, scheme, or technique is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such device, scheme, or technique is one thousand five hundred dollars or more.

(4) It shall be the duty of the Attorney General or appropriate county attorney to prosecute and defend all proceedings initiated in any court or otherwise under the act.

(5) The failure to do any act required by or under the Nebraska County and City Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1989, LB 767, § 92; Laws 1993, LB 563, § 21; Laws 1995, LB 344, § 33; Laws 1997, LB 248, § 34; Laws 2015, LB605, § 4. Effective date August 30, 2015.

ARTICLE 7

GIFT ENTERPRISES

Section

9-701. Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

9-701 Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

(1) For purposes of this section:

(a) Financial institution means a bank, savings bank, building and loan association, or savings and loan association, whether chartered by the United States, the Department of Banking and Finance, or a foreign state agency as defined in section 8-101; or any other similar organization which is covered by federal deposit insurance;

(b) Gift enterprise means a contest, game of chance, savings promotion raffle, or game promotion which is conducted within the state or throughout the state and other states in connection with the sale of consumer or trade products or services solely as business promotions and in which the elements of chance and prize are present. Gift enterprise does not include any scheme using the game of bingo or keno; any non-telecommunication-related, player-activated electronic or electromechanical facsimile of any game of chance; or any slot machine of any kind. A gift enterprise shall not utilize pickle cards as defined in section 9-315. Promotional game tickets may be utilized subject to the following:

(i) The tickets utilized shall be manufactured or imprinted with the name of the operator on each ticket;

(ii) The tickets utilized shall not be manufactured with a cost per play printed on them; and

(iii) The tickets utilized shall not be substantially similar to any type of pickle card approved by the Department of Revenue pursuant to section 9-332.01;

(c) Operator means any person, firm, corporation, financial institution, association, governmental entity, or agent or employee thereof who promotes, operates, or conducts a gift enterprise. Operator does not include any nonprofit organization or any agent or employee thereof, except that operator includes any credit union chartered under state or federal law or any agent or employee thereof who promotes, operates, or conducts a gift enterprise; and

(d) Savings promotion raffle means a contest conducted by a financial institution or credit union chartered under state or federal law or any agent or

employee thereof in which a chance of winning a designated prize is obtained by the deposit of a specified amount of money in a savings account or other savings program if each entry has an equal chance of winning.

(2) Any operator may conduct a gift enterprise within this state in accordance with this section.

(3) An operator shall not:

(a) Design, engage in, promote, or conduct a gift enterprise in connection with the promotion or sale of consumer products or services in which the winner may be unfairly predetermined or the game may be manipulated or rigged;

(b) Arbitrarily remove, disqualify, disallow, or reject any entry;

(c) Fail to award prizes offered;

(d) Print, publish, or circulate literature or advertising material used in connection with such gift enterprise which is false, deceptive, or misleading; or

(e) Require an entry fee, a payment or promise of payment of any valuable consideration, or any other consideration as a condition of entering a gift enterprise or winning a prize from the gift enterprise, except that a contest, game of chance, or business promotion may require, as a condition of participation, evidence of the purchase of a product or service as long as the purchase price charged for such product or service is not greater than it would have been without the contest, game of chance, or business promotion. For purposes of this section, consideration shall not include (i) filling out an entry blank, (ii) entering by mail with the purchase of postage at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less, (iii) entering by a telephone call to the operator of or for the gift enterprise at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less. When the only method of entry is by telephone, the cost to the entrant of the telephone call shall not exceed the cost of postage for a first-class letter weighing one ounce or less for any reason, including (A) whether any communication occurred during the call which was not related to the gift enterprise or (B) the fact that the cost of the call to the operator was greater than the cost to the entrant allowed under this section, or (iv) the deposit of money in a savings account or other savings program, regardless of the interest rate earned by such account or program.

(4) An operator shall disclose to participants all terms and conditions of a gift enterprise.

(5)(a) The Department of Revenue may adopt and promulgate rules and regulations necessary to carry out the operation of gift enterprises.

(b) Whenever the department has reason to believe that a gift enterprise is being operated in violation of this section or the department's rules and regulations, it may bring an action in the district court of Lancaster County in the name of and on behalf of the people of the State of Nebraska against the operator of the gift enterprise to enjoin the continued operation of such gift enterprise anywhere in the state.

(6)(a) Any person, firm, corporation, association, or agent or employee thereof who engages in any unlawful acts or practices pursuant to this section or violates any of the rules and regulations promulgated pursuant to this section shall be guilty of a Class II misdemeanor.

(b) Any person, firm, corporation, association, or agent or employee thereof who violates any provision of this section or any of the rules and regulations promulgated pursuant to this section shall be liable to pay a civil penalty of not more than one thousand dollars imposed by the district court of Lancaster County for each such violation which shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Each day of continued violation shall constitute a separate offense or violation for purposes of this section.

(7) A financial institution or credit union may limit the number of chances that a participant in a savings promotion raffle may obtain for making the required deposits but shall not limit the number of deposits.

(8) In all proceedings initiated in any court or otherwise under this section, the Attorney General or appropriate county attorney shall prosecute and defend all such proceedings.

(9) This section shall not apply to any activity authorized and regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1977, LB 38, § 230; Laws 1983, LB 259, § 39; R.S.1943, (1985), § 28-1114; Laws 1986, LB 1027, § 184; Laws 1991, LB 427, § 69; Laws 1993, LB 54, § 1; Laws 1994, LB 694, § 113; Laws 2004, LB 999, § 20; Laws 2011, LB524, § 1; Laws 2015, LB160, § 1.

Effective date August 30, 2015.

Cross References

Nebraska Bingo Act, see section 9-201.

Nebraska County and City Lottery Act, see section 9-601.

Nebraska Lottery and Raffle Act, see section 9-401.

Nebraska Pickle Card Lottery Act, see section 9-301.

Nebraska Small Lottery and Raffle Act, see section 9-501.

State Lottery Act, see section 9-801.

ARTICLE 8 STATE LOTTERY

Section

9-812. State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; Nebraska Education Improvement Fund; created; use; investment; unclaimed prize money; use.

9-812 State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; Nebraska Education Improvement Fund; created; use; investment; unclaimed prize money; use.

(1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of the costs of establishing and maintaining the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred

from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold.

(2) A portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund as provided in subsection (3) of this section. The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

(3) Of the money available to be transferred to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund:

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006;

(b) Beginning July 1, 2016, forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Education Improvement Fund;

(c) Through June 30, 2016, nineteen and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund;

(d) Through June 30, 2016, twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Opportunity Grant Fund;

(e) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(f) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money

remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(g) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006.

(4)(a) The Education Innovation Fund is created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement.

(b) For fiscal year 2014-15, the Education Innovation Fund shall be allocated, after administrative expenses, as follows: (i) The first one million two hundred thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next one million eight hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the State Department of Education pursuant to section 79-1103; (iv) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (v) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; (vi) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (vii) the next two million dollars shall be allocated for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337; (viii) the next one million dollars shall be transferred to the School District Reorganization Fund; (ix) up to the next one hundred forty-five thousand dollars shall be used by the State Department of Education to implement section 79-759; and (x) the next three hundred thirty-five thousand dollars shall be allocated to local systems as grants awarded by the State Department of Education to assist schools in evaluating and improving career education programs to align such programs with the state's economic and workforce needs. Except for funds transferred to the School District Reorganization Fund, the Early Childhood Education Endowment Cash Fund, or the department for early childhood education grants pursuant to section 79-1103, no funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016, and such funds received as transfers or allocations from the Education Innovation Fund that have not been used for their designated purpose as of such date shall be transferred to the Nebraska Education Improvement Fund on or before August 1, 2016.

(c) For fiscal year 2015-16, the Education Innovation Fund shall be allocated, after administrative expenses, as follows: (i) The first one million two hundred thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount

distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next one million nine hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the State Department of Education pursuant to section 79-1103; (iv) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (v) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (vi) the next two million five hundred thousand dollars shall be allocated for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337; (vii) the next one million dollars shall be transferred to the School District Reorganization Fund; (viii) up to the next one hundred forty-five thousand dollars shall be used by the State Department of Education to implement section 79-759; and (ix) of the amount remaining, (A) three million dollars shall be retained in the Education Innovation Fund to transfer to the Nebraska Education Improvement Fund on June 30, 2016, and (B) the remaining amount shall be allocated to local systems as grants awarded by the State Department of Education to assist schools in evaluating and improving career education programs to align such programs with the state's economic and workforce needs. Except for funds transferred to the School District Reorganization Fund, the Early Childhood Education Endowment Cash Fund, or the department for early childhood education grants pursuant to section 79-1103, no funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016, and such funds received as transfers or allocations from the Education Innovation Fund that have not been used for their designated purpose as of such date shall be transferred to the Nebraska Education Improvement Fund on or before August 1, 2016.

(d) The Education Innovation Fund terminates on June 30, 2016. Any money in the fund on such date shall be transferred to the Nebraska Education Improvement Fund on such date.

(5) The Nebraska Education Improvement Fund is created. The fund shall consist of money transferred pursuant to subsections (3) and (4) of this section, money transferred pursuant to section 85-1920, and any other funds appropriated by the Legislature. The fund shall be allocated, after actual and necessary administrative expenses, as provided in this section for fiscal years 2016-17 through 2020-21. A portion of each allocation may be retained by the agency to which the allocation is made or the agency administering the fund to which the allocation is made for actual and necessary expenses incurred by such agency for administration, evaluation, and technical assistance related to the purposes of the allocation, except that no amount of the allocation to the Nebraska Opportunity Grant Fund may be used for such purposes. On or before December 31, 2019, the Education Committee of the Legislature shall electronically submit recommendations to the Clerk of the Legislature regarding how the fund should be allocated to best advance the educational priorities of the state for the five-year period beginning with fiscal year 2021-22. For fiscal year 2016-17, an amount equal to ten percent of the revenue allocated to the Education Innovation Fund and to the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be retained in the Nebraska Education Improvement Fund. For fiscal years 2017-18 through 2020-21, an amount equal to ten percent of the revenue received by the Nebraska Education Improvement Fund

in the prior fiscal year shall be retained in the fund. For fiscal years 2016-17 through 2020-21, the remainder of the fund shall be allocated as follows:

(a) One percent of the allocated funds to the Expanded Learning Opportunity Grant Fund to carry out the Expanded Learning Opportunity Grant Program Act;

(b) Seventeen percent of the allocated funds to the Department of Education Innovative Grant Fund for competitive innovation grants pursuant to section 79-1054;

(c) Nine percent of the allocated funds to the Community College Gap Assistance Program Fund to carry out the community college gap assistance program;

(d) Eight percent of the allocated funds to the Excellence in Teaching Cash Fund to carry out the Excellence in Teaching Act;

(e) Sixty-two percent of the allocated funds to the Nebraska Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in conjunction with appropriations from the General Fund; and

(f) Three percent of the allocated funds to fund distance education incentives pursuant to section 79-1337.

(6) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, the Nebraska Education Improvement Fund, or the Education Innovation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Source: Laws 1991, LB 849, § 12; Laws 1992, LB 1257, § 57; Laws 1993, LB 138, § 28; Laws 1993, LB 563, § 24; Laws 1994, LB 647, § 5; Laws 1994, LB 694, § 119; Laws 1994, LB 1066, § 11; Laws 1995, LB 275, § 1; Laws 1995, LB 860, § 1; Laws 1996, LB 900, § 1015; Laws 1996, LB 1069, § 1; Laws 1997, LB 118, § 1; Laws 1997, LB 347, § 1; Laws 1997, LB 710, § 1; Laws 1997, LB 865, § 1; Laws 1998, LB 924, § 16; Laws 1998, LB 1228, § 7; Laws 1998, LB 1229, § 1; Laws 1999, LB 386, § 1; Laws 2000, LB 659, § 2; Laws 2000, LB 1243, § 1; Laws 2001, LB 797, § 1; Laws 2001, LB 833, § 1; Laws 2001, Spec. Sess., LB 3, § 1; Laws 2002, LB 1105, § 418; Laws 2002, LB 1310, § 3; Laws 2002, Second Spec. Sess., LB 1, § 1; Laws 2003, LB 367, § 1; Laws 2003, LB 574, § 21; Laws 2004, LB 1083, § 83; Laws 2004, LB 1091, § 1; Laws 2006, LB 1208, § 1; Laws 2007, LB638, § 16; Laws 2009, LB286, § 4; Laws 2009, LB545, § 1; Laws 2009, LB547, § 1; Laws 2009, First Spec. Sess., LB2, § 1; Laws 2010, LB956, § 1; Laws 2011, LB333, § 1; Laws 2011, LB575, § 7; Laws 2011, LB637, § 22; Laws 2012, LB1079, § 9; Laws 2013, LB6, § 9; Laws 2013, LB366, § 8; Laws 2013, LB495, § 1; Laws 2013, LB497, § 1; Laws 2014, LB967, § 2; Laws 2015, LB519, § 1. Effective date August 30, 2015.

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Cross References

Excellence in Teaching Act, see section 79-8,132.

Expanded Learning Opportunity Grant Program Act, see section 79-2501.

Interstate Compact on Educational Opportunity for Military Children, see section 79-2201.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Environmental Trust Act, see section 81-15,167.

Nebraska Opportunity Grant Act, see section 85-1901.

Nebraska State Funds Investment Act, see section 72-1260.



CHAPTER 10

BONDS

Article.

7. School District Bonds. 10-703.01.

ARTICLE 7

SCHOOL DISTRICT BONDS

Section

10-703.01. Issuance; election; notice; counting of ballots; canvass of vote.

10-703.01 Issuance; election; notice; counting of ballots; canvass of vote.

In all special elections called for voting on the question of issuing bonds of the school district, the county clerk or election commissioner or, if the school district lies in more than one county, the county clerk or election commissioner in the county having the greatest number of electors entitled to vote on the question shall designate the polling places and appoint the election officials, who need not be the regular election officials, and otherwise conduct the election as provided under the Election Act except as otherwise specifically provided in this section. Any special election held under this section shall be subject to section 32-405. The school district shall designate the form of ballot and reimburse the county clerk or election official for the expenses of conducting the election as provided in sections 32-1201 to 32-1208 and at the minimum rate as described in subdivision (2)(d) of section 32-1203. The school district officers shall give notice of the election at least twenty days prior to the election and cause the sample ballot to be published in a newspaper of general circulation in the school district one time not more than ten days nor less than three days prior to the election, and no notice of the election shall be required to be given by the county clerk or election commissioner. The notice of election shall state where ballots for early voting may be obtained.

The ballots shall be counted by the county clerk or election commissioner conducting the election and two disinterested persons appointed by him or her. When the polls are closed, the receiving board shall deliver the ballots to the county clerk or election commissioner conducting the election who, with the two disinterested persons appointed by him or her, shall proceed to count the ballots.

Ballots for early voting shall be furnished to the county clerk or election commissioner and ready for distribution by the county clerk or election commissioner conducting the election not less than fifteen days prior to the election.

When a school district lies in more than one county, the county clerk or election commissioner in any other county containing part of such school district shall, upon request, certify its registration books for those precincts in which the school district is located to the county clerk or election commissioner conducting the election and shall immediately forward all requests for ballots for early voting to the county clerk or election commissioner charged with the

issuing of such ballots. Not less than five days prior to the election, the school district officers shall certify to the county clerk or election commissioner conducting the election a list of all registered voters of the school district in any other county or counties qualified to vote on the bond issue.

All ballots cast at the election shall be counted by the same board. When all the ballots have been counted, the returns of such election shall be turned over to the school board or board of education of the district in which the election was held for the purpose of making a canvass thereof.

The two disinterested persons appointed on the counting board shall receive wages at no less than the minimum rate set in section 48-1203 for each hour of service rendered.

Source: Laws 1957, c. 352, § 1, p. 1198; Laws 1959, c. 26, § 1, p. 175; Laws 1972, LB 661, § 2; Laws 1973, LB 550, § 2; Laws 1979, LB 421, § 1; Laws 1984, LB 920, § 29; Laws 1992, LB 424, § 1; Laws 1994, LB 76, § 466; Laws 1997, LB 764, § 2; Laws 2002, LB 935, § 1; Laws 2003, LB 521, § 1; Laws 2005, LB 98, § 1; Laws 2014, LB946, § 1; Laws 2015, LB575, § 1.
Operative date August 30, 2015.

Cross References

Election Act, see section 32-101.

CHAPTER 13

CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

Article.

3. Political Subdivisions; Particular Classes and Projects.
 - (b) Ambulance Service. 13-303.
4. Political Subdivisions; Laws Applicable to All. 13-404.
5. Budgets.
 - (a) Nebraska Budget Act. 13-503 to 13-511.
 - (d) Budget Limitations. 13-518 to 13-520.
19. Development Districts. 13-1905 to 13-1907.
24. Retirement Benefits and Plans. 13-2402.
25. Joint Public Agency Act. 13-2507.
26. Convention Center Facility Financing Assistance Act. 13-2610.
27. Civic and Community Center Financing Act. 13-2704.
28. Municipal Counties. 13-2809.
31. Sports Arena Facility Financing Assistance Act. 13-3108.

ARTICLE 3

POLITICAL SUBDIVISIONS; PARTICULAR CLASSES AND PROJECTS

(b) AMBULANCE SERVICE

Section

- 13-303. Counties, cities, and villages; contract; agreement; hearing; notice; cost; levy; fee.

(b) AMBULANCE SERVICE

13-303 Counties, cities, and villages; contract; agreement; hearing; notice; cost; levy; fee.

The county boards of counties and the governing bodies of cities and villages may establish an emergency medical service, including the provision of scheduled and unscheduled ambulance service, as a governmental service either within or without the county or municipality, as the case may be. The county board or governing body may contract with any city, person, firm, or corporation licensed as an emergency medical service for emergency medical care by out-of-hospital emergency care providers. Each may enter into an agreement with the other under the Interlocal Cooperation Act or Joint Public Agency Act for the purpose of establishing an emergency medical service or may provide a separate service for itself. Public funds may be expended therefor, and a reasonable service fee may be charged to the user. Before any such service is established under the authority of this section, the county board or the governing bodies of cities and villages shall hold a public hearing after giving at least ten days' notice thereof, which notice shall include a brief summary of the general plan for establishing such service, including an estimate of the initial cost and the possible continuing cost of operating such service. If the board or governing body after such hearing determines that an emergency medical service for emergency medical care by out-of-hospital emergency care providers is needed, it may proceed as authorized in this section. The authority

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granted in this section shall be cumulative and supplementary to any existing powers heretofore granted. Any county board of counties and the governing bodies of cities and villages may pay their cost for such service out of available general funds or may levy a tax for the purpose of providing the service, which levy shall be in addition to all other taxes and shall be in addition to restrictions on the levy of taxes provided by statute, except that when a rural or suburban fire protection district provides the service, the county shall pay the cost for the county service by levying a tax on that property not in the rural or suburban fire protection district providing the service. The levy shall be subject to subsection (10) of section 77-3442 or section 77-3443, as applicable.

Source: Laws 1967, c. 111, § 1, p. 359; Laws 1973, LB 239, § 1; Laws 1978, LB 560, § 2; R.S.1943, (1983), § 23-378; Laws 1996, LB 1114, § 25; Laws 1997, LB 138, § 31; Laws 1999, LB 87, § 51; Laws 2001, LB 808, § 1; Laws 2015, LB325, § 1.
Operative date July 1, 2016.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

**ARTICLE 4
POLITICAL SUBDIVISIONS; LAWS APPLICABLE TO ALL**

Section
13-404. Civil offices; vacancy; how filled.

13-404 Civil offices; vacancy; how filled.

Every civil office in a political subdivision filled by appointment shall be vacant upon the happening of any one of the events listed in section 32-560 except as provided in section 32-561. The resignation of the incumbent of such a civil office may be made as provided in section 32-562. Vacancies in such a civil office shall be filled as provided in sections 32-567 and 32-574 and shall be subject to section 32-563.

Source: Laws 1994, LB 76, § 468; Laws 2015, LB575, § 2.
Operative date August 30, 2015.

**ARTICLE 5
BUDGETS**

(a) NEBRASKA BUDGET ACT

Section
13-503. Terms, defined.
13-504. Proposed budget statement; contents; corrections; cash reserve; limitation.
13-511. Revision of adopted budget statement; when; supplemental funds; hearing; notice; warrants; issuance; correction.

(d) BUDGET LIMITATIONS

13-518. Terms, defined.
13-519. Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.
13-520. Limitations; not applicable to certain restricted funds.

(a) NEBRASKA BUDGET ACT

13-503 Terms, defined.

For purposes of the Nebraska Budget Act, unless the context otherwise requires:

(1) Governing body means the governing body of any county agricultural society, elected county fair board, joint airport authority formed under the Joint Airport Authorities Act, city or county airport authority, bridge commission created pursuant to section 39-868, cemetery district, city, village, municipal county, community college, community redevelopment authority, county, drainage or levee district, educational service unit, rural or suburban fire protection district, historical society, hospital district, irrigation district, learning community, natural resources district, nonprofit county historical association or society for which a tax is levied under subsection (1) of section 23-355.01, public building commission, railroad transportation safety district, reclamation district, road improvement district, rural water district, school district, sanitary and improvement district, township, offstreet parking district, transit authority, metropolitan utilities district, Educational Service Unit Coordinating Council, and political subdivision with the authority to have a property tax request, with the authority to levy a toll, or that receives state aid;

(2) Levying board means any governing body which has the power or duty to levy a tax;

(3) Fiscal year means the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;

(4) Tax means any general or special tax levied against persons, property, or business for public purposes as provided by law but shall not include any special assessment;

(5) Auditor means the Auditor of Public Accounts;

(6) Cash reserve means funds required for the period before revenue would become available for expenditure but shall not include funds held in any special reserve fund;

(7) Public funds means all money, including nontax money, used in the operation and functions of governing bodies. For purposes of a county, city, or village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, city, or village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes;

(8) Adopted budget statement means a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506. Such term shall include additions, if any, to an adopted budget statement made by a revised budget which has been adopted as provided in section 13-511;

(9) Special reserve fund means any special fund set aside by the governing body for a particular purpose and not available for expenditure for any other purpose. Funds created for (a) the retirement of bonded indebtedness, (b) the funding of employee pension plans, (c) the purposes of the Political Subdivisions Self-Funding Benefits Act, (d) the purposes of the Local Option Municipal Economic Development Act, (e) voter-approved sinking funds, or (f) statutorily authorized sinking funds shall be considered special reserve funds;

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(10) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years used by a city, village, or natural resources district in determining and carrying on its financial and taxing affairs; and

(11) Biennial budget means (a) a budget by a city of the primary or metropolitan class that adopts a charter provision providing for a biennial period to determine and carry on the city's financial and taxing affairs, (b) a budget by a city of the first or second class or village that provides for a biennial period to determine and carry on the city's or village's financial and taxing affairs, or (c) a budget by a natural resources district that provides for a biennial period to determine and carry on the natural resources district's financial and taxing affairs.

Source: Laws 1969, c. 145, § 2, p. 669; Laws 1972, LB 537, § 1; Laws 1977, LB 510, § 6; R.S.1943, (1987), § 23-922; Laws 1988, LB 802, § 2; Laws 1992, LB 1063, § 3; Laws 1992, Second Spec. Sess., LB 1, § 3; Laws 1993, LB 734, § 17; Laws 1994, LB 1257, § 3; Laws 1996, LB 299, § 10; Laws 1997, LB 250, § 2; Laws 1999, LB 437, § 25; Laws 2000, LB 968, § 4; Laws 2000, LB 1116, § 6; Laws 2001, LB 142, § 25; Laws 2003, LB 607, § 1; Laws 2006, LB 1024, § 1; Laws 2007, LB603, § 1; Laws 2009, LB392, § 2; Laws 2010, LB779, § 1; Laws 2013, LB111, § 1; Laws 2015, LB164, § 2.

Effective date August 30, 2015.

Cross References

Joint Airport Authorities Act, see section 3-716.

Local Option Municipal Economic Development Act, see section 18-2701.

Nebraska County and City Lottery Act, see section 9-601.

Political Subdivisions Self-Funding Benefits Act, see section 13-1601.

13-504 Proposed budget statement; contents; corrections; cash reserve; limitation.

(1) Each governing body shall annually or biennially, as the case may be, prepare a proposed budget statement on forms prescribed and furnished by the auditor. The proposed budget statement shall be made available to the public by the political subdivision prior to publication of the notice of the hearing on the proposed budget statement pursuant to section 13-506. A proposed budget statement shall contain the following information, except as provided by state law:

(a) For the immediately preceding fiscal year or biennial period, the revenue from all sources, including motor vehicle taxes, other than revenue received from personal and real property taxation, allocated to the funds and separately stated as to each such source: The unencumbered cash balance at the beginning and end of the year or biennial period; the amount received by taxation of personal and real property; and the amount of actual expenditures;

(b) For the current fiscal year or biennial period, actual and estimated revenue from all sources, including motor vehicle taxes, allocated to the funds and separately stated as to each such source: The actual unencumbered cash balance available at the beginning of the year or biennial period; the amount received from personal and real property taxation; and the amount of actual and estimated expenditures, whichever is applicable. Such statement shall contain the cash reserve for each fiscal year or biennial period and shall note

whether or not such reserve is encumbered. Such cash reserve projections shall be based upon the actual experience of prior years or biennial periods. The cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items;

(c) For the immediately ensuing fiscal year or biennial period, an estimate of revenue from all sources, including motor vehicle taxes, other than revenue to be received from taxation of personal and real property, separately stated as to each such source: The actual or estimated unencumbered cash balances, whichever is applicable, to be available at the beginning of the year or biennial period; the amounts proposed to be expended during the year or biennial period; and the amount of cash reserve, based on actual experience of prior years or biennial periods, which cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items;

(d) A statement setting out separately the amount sought to be raised from the levy of a tax on the taxable value of real property (i) for the purpose of paying the principal or interest on bonds issued by the governing body and (ii) for all other purposes;

(e) A uniform summary of the proposed budget statement, including each proprietary function fund included in a separate proprietary budget statement prepared pursuant to the Municipal Proprietary Function Act, and a grand total of all funds maintained by the governing body;

(f) For municipalities, a list of the proprietary functions which are not included in the budget statement. Such proprietary functions shall have a separate budget statement which is approved by the city council or village board as provided in the Municipal Proprietary Function Act; and

(g) For school districts and educational service units, a separate identification and description of all current and future costs to the school district or educational service unit which are reasonably anticipated as a result of any contract, and any adopted amendments thereto, for superintendent services to be rendered to such school district or administrator services to be rendered to such educational service unit.

(2) The actual or estimated unencumbered cash balance required to be included in the budget statement by this section shall include deposits and investments of the political subdivision as well as any funds held by the county treasurer for the political subdivision and shall be accurately stated on the proposed budget statement.

(3) The political subdivision shall correct any material errors in the budget statement detected by the auditor or by other sources.

Source: Laws 1969, c. 145, § 3, p. 670; Laws 1971, LB 129, § 1; Laws 1984, LB 932, § 3; Laws 1986, LB 889, § 2; Laws 1987, LB 183, § 3; R.S.Supp., 1987, § 23-923; Laws 1989, LB 33, § 6; Laws 1993, LB 310, § 3; Laws 1993, LB 734, § 18; Laws 1994, LB 1310, § 1; Laws 1995, LB 490, § 22; Laws 1996, LB 1362, § 1; Laws 1997, LB 271, § 9; Laws 1999, LB 86, § 3; Laws 2000, LB 968, § 5; Laws 2002, LB 568, § 1; Laws 2013, LB111, § 2; Laws 2014, LB470, § 1; Laws 2015, LB164, § 3.
Effective date August 30, 2015.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

13-511 Revision of adopted budget statement; when; supplemental funds; hearing; notice; warrants; issuance; correction.

(1) Unless otherwise provided by law, whenever during the current fiscal year or biennial period it becomes apparent to a governing body that (a) there are circumstances which could not reasonably have been anticipated at the time the budget for the current year or biennial period was adopted, (b) the budget adopted violated sections 13-518 to 13-522, such that the revenue of the current fiscal year or biennial period for any fund thereof will be insufficient, additional expenses will be necessarily incurred, or there is a need to reduce the budget requirements to comply with sections 13-518 to 13-522, or (c) the governing body has been notified by the auditor of a mathematical or accounting error or noncompliance with the Nebraska Budget Act, such governing body may propose to revise the previously adopted budget statement and shall conduct a public hearing on such proposal. The public hearing requirement shall not apply to emergency expenditures pursuant to section 81-829.51.

(2) Notice of the time and place of the hearing shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. Such published notice shall set forth (a) the time and place of the hearing, (b) the amount in dollars of additional or reduced money required and for what purpose, (c) a statement setting forth the nature of the unanticipated circumstances and, if the budget requirements are to be increased, the reasons why the previously adopted budget of expenditures cannot be reduced during the remainder of the current year or biennial period to meet the need for additional money in that manner, (d) a copy of the summary of the originally adopted budget previously published, and (e) a copy of the summary of the proposed revised budget.

(3) At such hearing any taxpayer may appear or file a written statement protesting any application for additional money. A written record shall be kept of all such hearings.

(4) Upon conclusion of the public hearing on the proposed revised budget and approval of the proposed revised budget by the governing body, the governing body shall file with the county clerk of the county or counties in which such governing body is located, with the learning community coordinating council for school districts that are members of learning communities, and with the auditor, a copy of the revised budget, as adopted. The governing body may then issue warrants in payment for expenditures authorized by the adopted revised budget. Such warrants shall be referred to as registered warrants and shall be repaid during the next fiscal year or biennial period from funds derived from taxes levied therefor.

(5) Within thirty days after the adoption of the budget under section 13-506, a governing body may, or within thirty days after notification of an error by the auditor, a governing body shall, correct an adopted budget which contains a clerical, mathematical, or accounting error which does not affect the total amount budgeted by more than one percent or increase the amount required from property taxes. No public hearing shall be required for such a correction. After correction, the governing body shall file a copy of the corrected budget with the county clerk of the county or counties in which such governing body is

located and with the auditor. The governing body may then issue warrants in payment for expenditures authorized by the budget.

Source: Laws 1969, c. 145, § 9, p. 673; R.S.1943, (1983), § 23-929; Laws 1993, LB 734, § 22; Laws 1996, LB 299, § 12; Laws 1999, LB 86, § 6; Laws 2000, LB 1116, § 8; Laws 2001, LB 797, § 2; Laws 2002, LB 568, § 5; Laws 2006, LB 1024, § 3; Laws 2015, LB283, § 1.

Effective date May 27, 2015.

(d) BUDGET LIMITATIONS

13-518 Terms, defined.

For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;

(3) Governing body has the same meaning as in section 13-503;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, (h) the tax provided in sections 77-27,223 to 77-27,227 beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county under section 77-1776. Funds received pursuant to the nameplate capacity tax levied under section 77-6203 for the first five years after a renewable energy generation facility has been commissioned are nonrestricted funds; and

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(7) State aid means:

(a) For all governmental units, state aid paid pursuant to sections 60-3,202 and 77-3523 and reimbursement provided pursuant to section 77-1239;

(b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, state aid to counties paid pursuant to sections 39-2501 to 39-2520 and 60-3,184 to 60-3,190, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933;

(d) For community colleges, (i) for fiscal years 2010-11, 2011-12, and 2012-13, state aid to community colleges paid pursuant to section 90-517 and (ii) for fiscal year 2013-14 and each fiscal year thereafter, state aid to community colleges paid pursuant to the Community College Aid Act;

(e) For educational service units, state aid appropriated under sections 79-1241.01 and 79-1241.03; and

(f) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

Source: Laws 1996, LB 299, § 1; Laws 1997, LB 269, § 11; Laws 1998, LB 989, § 1; Laws 1998, LB 1104, § 4; Laws 1999, LB 36, § 2; Laws 1999, LB 86, § 7; Laws 1999, LB 881, § 6; Laws 2001, LB 335, § 1; Laws 2002, LB 259, § 6; Laws 2002, LB 876, § 3; Laws 2003, LB 540, § 1; Laws 2003, LB 563, § 16; Laws 2004, LB 1005, § 1; Laws 2005, LB 274, § 222; Laws 2007, LB342, § 30; Laws 2009, LB218, § 1; Laws 2009, LB549, § 1; Laws 2010, LB1048, § 1; Laws 2010, LB1072, § 1; Laws 2011, LB59, § 1; Laws 2011, LB383, § 1; Laws 2012, LB946, § 8; Laws 2015, LB259, § 4; Laws 2015, LB424, § 1.

Operative date January 1, 2016.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB259, section 4, with LB424, section 1, to reflect all amendments.

Cross References

Community College Aid Act, see section 85-2231.

13-519 Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.

(1)(a) Subject to subdivision (1)(b) of this section, for all fiscal years beginning on or after July 1, 1998, no governmental unit shall adopt a budget containing a total of budgeted restricted funds more than the last prior year's total of budgeted restricted funds plus allowable growth plus the basic allowable growth percentage of the base limitation established under section 77-3446. For the second fiscal year in which a county will receive a full year of receipts from the tax imposed in sections 77-27,223 to 77-27,227, the prior year's total of restricted funds shall be the prior year's total of restricted funds plus the total receipts from the tax imposed in sections 77-27,223 to 77-27,227 in the prior year. If a governmental unit transfers the financial responsibility of providing a service financed in whole or in part with restricted funds to another governmental unit or the state, the amount of restricted funds associated with providing the service shall be subtracted from the last prior year's total of budgeted restricted funds for the previous provider and may be added to the

last prior year's total of restricted funds for the new provider. For governmental units that have consolidated, the calculations made under this section for consolidating units shall be made based on the combined total of restricted funds, population, or full-time equivalent students of each governmental unit.

(b) For all fiscal years beginning on or after July 1, 2008, educational service units may exceed the limitations of subdivision (1)(a) of this section to the extent that one hundred ten percent of the needs for the educational service unit calculated pursuant to section 79-1241.03 exceeds the budgeted restricted funds allowed pursuant to subdivision (1)(a) of this section.

(2) A governmental unit may exceed the limit provided in subdivision (1)(a) of this section for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.

(3) A governmental unit may exceed the applicable allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting on the issue at a special election called for such purpose upon the recommendation of the governing body or upon the receipt by the county clerk or election commissioner of a petition requesting an election signed by at least five percent of the legal voters of the governmental unit. The recommendation of the governing body or the petition of the legal voters shall include the amount and percentage by which the governing body would increase its budgeted restricted funds for the ensuing year over and above the current year's budgeted restricted funds. The county clerk or election commissioner shall call for a special election on the issue within thirty days after the receipt of such governing body recommendation or legal voter petition. The election shall be held pursuant to the Election Act, and all costs shall be paid by the governing body. The issue may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

(4) In lieu of the election procedures in subsection (3) of this section, any governmental unit may exceed the allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting at a meeting of the residents of the governmental unit, called after notice is published in a newspaper of general circulation in the governmental unit at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the governmental unit shall constitute a quorum for purposes of taking action to exceed the allowable growth percentage. If a majority of the registered voters present at the meeting vote in favor of exceeding the allowable growth percentage, a copy of the record of that action shall be forwarded to the Auditor of Public Accounts along with the budget documents. The issue to exceed the allowable growth percentage may be approved at the same meeting as a vote to exceed the limits or final levy allocation provided in section 77-3444.

Source: Laws 1996, LB 299, § 2; Laws 1998, LB 989, § 2; Laws 2001, LB 329, § 9; Laws 2002, LB 259, § 7; Laws 2003, LB 9, § 1; Laws 2005, LB 38, § 1; Laws 2008, LB1154, § 2; Laws 2009, LB121, § 1; Laws 2009, LB501, § 1; Laws 2010, LB1072, § 2; Laws 2015, LB261, § 1.

Operative date August 30, 2015.

Cross References

Election Act, see section 32-101.

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13-520 Limitations; not applicable to certain restricted funds.

The limitations in section 13-519 shall not apply to (1) restricted funds budgeted for capital improvements, (2) restricted funds expended from a qualified sinking fund for acquisition or replacement of tangible personal property with a useful life of five years or more, (3) restricted funds pledged to retire bonded indebtedness, used by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport, or used to pay other financial instruments that are approved and agreed to before July 1, 1999, in the same manner as bonds by a governing body created under section 35-501, (4) restricted funds budgeted in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or by an independent joint entity or joint public agency, (5) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, (6) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit, or (7) the dollar amount by which restricted funds budgeted by a natural resources district to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04.

Source: Laws 1996, LB 299, § 3; Laws 1998, LB 989, § 3; Laws 1999, LB 86, § 8; Laws 1999, LB 87, § 54; Laws 1999, LB 141, § 1; Laws 2004, LB 962, § 4; Laws 2009, LB121, § 2; Laws 2015, LB261, § 2.

Operative date August 30, 2015.

Cross References

Emergency Management Act, see section 81-829.36.

Nebraska Ground Water Management and Protection Act, see section 46-701.

ARTICLE 19

DEVELOPMENT DISTRICTS

Section

13-1905. Development districts; certification for funding.

13-1906. Distribution of financial assistance.

13-1907. Rules and regulations; annual reports; evaluation; Governor; powers.

13-1905 Development districts; certification for funding.

If state funding is available for distribution pursuant to section 13-1906, the Department of Economic Development shall certify development districts for funding eligibility. Certification shall be based on the following requirements:

(1) The development district shall be formed as provided in section 13-1902;

(2) The development district shall have a staff which shall at a minimum include a full-time director to provide assistance to the local governments which are members of the development district; and

(3) The agreement creating the development district shall insure that all of the local governments within the Nebraska planning and development region may at any time join in the development district.

Source: Laws 1992, LB 573, § 5; Laws 2015, LB661, § 25.
Effective date May 21, 2015.

13-1906 Distribution of financial assistance.

(1) The Department of Economic Development shall distribute financial assistance from the state, if available, to the various development districts as they are certified in the manner prescribed in subsection (2) of this section.

(2)(a) Fifty percent of the total sum allocated shall be divided equally among the certified development districts. In certified districts formed by regional councils, funds may be prorated among the cooperating regional councils based upon a formula approved by the governing boards of each of the cooperating regional councils and accepted by the department.

(b) Twenty percent of the total sum allocated shall be divided among the certified development districts based upon their proportional share of the population of all certified development districts in the state. For purposes of this subdivision, population shall mean the number of residents as shown by the latest federal decennial census, except that the population of a county shall mean the number of residents in the unincorporated areas of the county.

(c) Thirty percent of the total sum allocated shall be divided among the certified development districts based upon their proportional share of the local governments located within all certified development districts.

(3) Distributions to newly certified development districts shall not reduce financial assistance to previously funded development districts. State financial assistance shall not exceed the total local dollars received by the development district as verified by the department. For purposes of this subsection, local dollars received shall mean the total local dues received by a development district from any local government as a condition of membership in a development district.

Source: Laws 1992, LB 573, § 6; Laws 2015, LB661, § 26.
Effective date May 21, 2015.

13-1907 Rules and regulations; annual reports; evaluation; Governor; powers.

(1) The Department of Economic Development shall adopt and promulgate rules and regulations to carry out sections 13-1901 to 13-1907 which shall include standardized reporting and application procedures. Each development district shall submit annual performance and financial reports to the department which shall address the activities performed and services delivered.

(2) The Governor shall, from time to time, evaluate the effectiveness and activities of the development districts receiving assistance. If the Governor finds a development district to be ineffective, he or she may take action, including the withholding of assistance authorized under section 13-1906.

Source: Laws 1992, LB 573, § 7; Laws 2015, LB661, § 27.
Effective date May 21, 2015.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 24

RETIREMENT BENEFITS AND PLANS

Section

13-2402. Political subdivision with defined benefit plan; notification required; valuation report; filing; report required; when; contents; failure to file; audit; costs.

13-2402 Political subdivision with defined benefit plan; notification required; valuation report; filing; report required; when; contents; failure to file; audit; costs.

(1) On or before November 1, 2014, each political subdivision which offers a defined benefit plan pursuant to section 401(a) of the Internal Revenue Code which was open to new members on January 1, 2004, shall submit written notification to the Nebraska Retirement Systems Committee of the Legislature that it offers such a plan.

(2) Beginning November 15, 2014, and each October 15 thereafter, the governing entity of the retirement plan of each political subdivision that offers such a defined benefit retirement plan shall file with the committee a copy of the most recent annual actuarial valuation of the retirement plan. The valuation report shall be filed electronically.

(3)(a) Beginning November 15, 2014, and each October 15 thereafter, the governing entity of the retirement plan of each political subdivision that offers such a defined benefit retirement plan shall file a report with the committee if either of the following conditions exists as of the latest annual actuarial valuation of the retirement plan: (i) The contributions do not equal the actuarial requirement for funding; or (ii) the funded ratio is less than eighty percent.

(b) The report shall include, but not be limited to, an analysis of the conditions and a recommendation for the circumstances and timing of any future benefit changes, contribution changes, or other corrective action, or any combination of actions, to improve the conditions. The committee may require a governing entity to present its report to the committee at a public hearing. The report shall be submitted electronically.

(4) If a governing entity does not file the reports required by subsection (2) or (3) of this section with the committee by October 15, the Auditor of Public Accounts may audit, or cause to be audited, the political subdivision offering the retirement plan. All costs of the audit shall be paid by the political subdivision.

(5) For purposes of this section, political subdivision means any local governmental body formed and organized under state law and any joint entity or joint public agency created under state law to act on behalf of political subdivisions.

Source: Laws 2014, LB759, § 1; Laws 2015, LB42, § 1.
Effective date August 30, 2015.

ARTICLE 25
JOINT PUBLIC AGENCY ACT

Section

13-2507. Power to tax; election; when required.

13-2507 Power to tax; election; when required.

(1) Subject to subsection (4) of this section, a joint public agency shall have only those powers of taxation as one or more of the participating public agencies has and only as specifically provided in the agreement proposing creation of the joint public agency, except that a joint public agency shall not levy a local option sales tax. Participating public agencies may agree to allow the joint public agency to levy a property tax rate not to exceed a limit as provided in the agreement if the agreement also limits the levy authority of the overlapping participating public agencies collectively to the same amount. The levy authority of a joint public agency shall be allocated by the city or county as provided in section 77-3443, and the agreement may require allocation of levy authority by the city or county.

(2) If one or more of the participating public agencies is a municipality, the agreement may allow any occupation or wheel tax to be extended over the area encompassed by the joint public agency at a rate uniform to that of the city or village for the purpose of providing revenue to finance the services to be provided by the joint public agency. The tax shall not be extended until the procedures governing enactment by the municipality are followed by the joint public agency, including any requirement for a public vote.

(3) If the agreement calls for the allocation of property tax levy authority to the joint public agency, the amount of the allocation to the joint public agency and from each participating public agency shall be reported to the Property Tax Administrator.

(4)(a) Prior to the issuance of bonds and the pledge of property tax levy authority allocated to a joint public agency to pay the principal of and interest on bonds to be issued by the joint public agency, the joint public agency shall hold an election to present the question of issuing such bonds and levying such tax to the registered voters of the participating public agency which allocated such property tax levy authority. Such election shall be held at a special election called for such purpose or an election held in conjunction with a statewide or local primary or general election.

(b) If a ballot question is required to be submitted to the registered voters of more than one participating public agency pursuant to subdivision (a) of this subsection and if the participating public agencies have overlapping jurisdiction of any geographic area, the registered voters residing in the geographic area subject to overlapping jurisdiction shall only be entitled to one vote on the ballot question.

(c) A joint public agency may issue refunding bonds as authorized in section 13-2537 which are payable from the same security and tax levy authority as bonds being refunded without holding an election as required by this subsection if the issuance of the refunding bonds does not allow additional principal and does not allow extension of the final maturity date of the indebtedness.

Source: Laws 1999, LB 87, § 7; Laws 2015, LB132, § 1.
Effective date August 30, 2015.

ARTICLE 26

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT

Section

13-2610. Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee.

13-2610 Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee.

(1) Upon the annual certification under section 13-2609, the State Treasurer shall transfer after the audit the amount certified to the Convention Center Support Fund. The Convention Center Support Fund is created. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Convention Center Support Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) It is the intent of the Legislature to appropriate from the fund to any political subdivision for which an application for state assistance under the Convention Center Facility Financing Assistance Act has been approved an amount not to exceed (i) seventy percent of the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, (ii) seventy-five million dollars for any one approved project, or (iii) the total cost of acquiring, constructing, improving, or equipping the eligible facility. State assistance shall not be used for an operating subsidy or other ancillary facility.

(b) Ten percent of such funds appropriated to a city of the metropolitan class under this subsection shall be equally distributed to areas with a high concentration of poverty to (i) showcase important historical aspects of such areas or areas within close geographic proximity of the area with a high concentration of poverty or (ii) assist with the reduction of street and gang violence in such areas.

(c) Each area with a high concentration of poverty that has been distributed funds under subdivision (b) of this subsection shall establish a development fund and form a committee which shall identify and research potential projects to be completed in the area with a high concentration of poverty or in an area within close geographic proximity of such area if the project would have a significant or demonstrable impact on such area and make final determinations on the use of state sales tax revenue received for such projects.

(d) A committee formed in subdivision (c) of this subsection shall include the following three members:

(i) The member of the city council whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty;

(ii) The commissioner of the county whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty; and

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(iii) A resident of the area with a high concentration of poverty, appointed by the other two members of the committee.

(e) A committee formed in subdivision (c) of this subsection shall solicit project ideas from the public and shall hold a public hearing in the area with a high concentration of poverty. Notice of a proposed hearing shall be provided in accordance with the procedures for notice of a public hearing pursuant to section 18-2115. The committee shall research potential projects and make the final determination regarding the annual distribution of funding to such projects.

(f) For purposes of this subsection, an area with a high concentration of poverty means an area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census.

(3) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subdivision (2)(a) of this section, whichever comes first.

(4) The remaining thirty percent of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, shall be appropriated by the Legislature to the Civic and Community Center Financing Fund. Upon the annual certification required pursuant to section 13-2609 and following the transfer to the Convention Center Support Fund required pursuant to subsection (1) of this section, the State Treasurer shall transfer an amount equal to the remaining thirty percent from the Convention Center Support Fund to the Civic and Community Center Financing Fund.

(5) Any municipality that has applied for and received a grant of assistance under the Civic and Community Center Financing Act may not receive state assistance under the Convention Center Facility Financing Assistance Act.

Source: Laws 1999, LB 382, § 10; Laws 2007, LB551, § 6; Laws 2008, LB754, § 1; Laws 2009, LB63, § 1; Laws 2010, LB975, § 1; Laws 2011, LB297, § 1; Laws 2015, LB661, § 28.
Effective date May 21, 2015.

Cross References

Civic and Community Center Financing Act, see section 13-2701.

Limitation on applications, see section 13-2612.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 27

CIVIC AND COMMUNITY CENTER FINANCING ACT

Section

13-2704. Civic and Community Center Financing Fund; created; use; investment.

13-2704 Civic and Community Center Financing Fund; created; use; investment.

(1) The Civic and Community Center Financing Fund is created. The fund shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Transfers may be made from the fund to the General Fund, the Department of Revenue Enforcement Fund, and the State Colleges Sport Facilities Cash Fund at the direction of the Legislature.

(2)(a) The department shall use the Civic and Community Center Financing Fund for the following purposes:

- (i) For grants of assistance as described in section 13-2704.01;
- (ii) For grants of assistance as described in section 13-2704.02; and
- (iii) For reasonable and necessary costs of the department directly related to the administration of the fund, not to exceed the amount needed to employ a one-half full-time equivalent employee.

(b) The fund may not be used for programming, marketing, advertising, or facility-staffing activities.

(3) The State Treasurer shall transfer two hundred fifty thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund on October 1 of 2012, 2013, and 2014. Commencing October 1, 2015, and every year thereafter, the State Treasurer shall transfer three hundred thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund.

Source: Laws 1999, LB 382, § 16; Laws 2009, First Spec. Sess., LB3, § 8; Laws 2010, LB779, § 5; Laws 2011, LB297, § 5; Laws 2012, LB969, § 4; Laws 2013, LB153, § 4; Laws 2015, LB661, § 29. Effective date May 21, 2015.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**ARTICLE 28
MUNICIPAL COUNTIES**

Section

13-2809. Municipalities and fire protection districts within municipal county; treatment.

13-2809 Municipalities and fire protection districts within municipal county; treatment.

(1) An area within the boundaries of a municipality which remains within the boundaries of a municipal county and is not consolidated into the municipal county at the time of the formation of the municipal county shall not be considered to be part of the municipal county for any purpose. Such a municipality shall not be annexed by the municipal county, and such a municipality shall not annex any territory, for at least four years after the date of creation of the municipal county. Such a municipality shall retain:

(a) The authority to levy property taxes, not to exceed ninety cents per one hundred dollars of taxable value except as provided in sections 77-3442 and 77-3444; and

(b) All the other powers and duties applicable to a municipality of the same population with the same form of government in effect on the date of creation of the municipal county, including, but not limited to, its zoning jurisdiction and the authority to impose a tax as provided in the Local Option Revenue Act.

(2) In order to provide economical and efficient services, a municipality within the boundaries of a municipal county may annex adjacent territory within the municipal county if the municipal county consents. Consent shall be granted if the services will be provided by the municipality within the annexed territory at less cost than similar services provided by the municipal county.

(3) All fire protection districts which are within the boundaries of a municipal county shall continue to exist after formation of the municipal county.

Source: Laws 2001, LB 142, § 9; Laws 2015, LB325, § 2.
Operative date July 1, 2016.

Cross References

Local Option Revenue Act, see section 77-27,148.

ARTICLE 31

SPORTS ARENA FACILITY FINANCING ASSISTANCE ACT

Section

13-3108. Sports Arena Facility Support Fund; created; investment; State Treasurer; duties; state assistance; use.

13-3108 Sports Arena Facility Support Fund; created; investment; State Treasurer; duties; state assistance; use.

(1) The Sports Arena Facility Support Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) Upon receiving the certification described in subsection (3) of section 13-3107, the State Treasurer shall transfer the amount certified to the fund.

(b) Upon receiving the quarterly certification described in subsection (4) of section 13-3107, the State Treasurer shall transfer the amount certified to the fund.

(3)(a) It is the intent of the Legislature to appropriate from the fund money to be distributed as provided in subsections (4) and (5) of this section to any political subdivision for which an application for state assistance under the Sports Arena Facility Financing Assistance Act has been approved an amount not to exceed seventy percent of the (i) state sales tax revenue collected by retailers doing business at eligible sports arena facilities on sales at such facilities, (ii) state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and (iii) new state sales tax revenue collected by nearby retailers and sourced under sections 77-2703.01 to 77-2703.04 to a location within six hundred yards of the eligible facility.

(b) The amount to be appropriated for distribution as state assistance to a political subdivision under this subsection for any one year after the tenth year

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shall not exceed the highest such amount appropriated under subdivision (3)(a) of this section during any one year of the first ten years of such appropriation. If seventy percent of the state sales tax revenue as described in subdivision (3)(a) of this section exceeds the amount to be appropriated under this subdivision, such excess funds shall be transferred to the General Fund.

(4) The amount certified under subsection (3) of section 13-3107 shall be distributed as state assistance on or before April 15, 2014.

(5) Beginning in 2014, quarterly distributions and associated transfers of state assistance shall be made. Such quarterly distributions and transfers shall be based on the certifications provided under subsection (4) of section 13-3107 and shall occur within fifteen days after receipt of such certification.

(6) The total amount of state assistance approved for an eligible sports arena facility shall not (a) exceed fifty million dollars or (b) be paid out for more than twenty years after the issuance of the first bond for the sports arena facility.

(7) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subsection (6) of this section, whichever comes first.

(8) State assistance shall not be used for an operating subsidy or other ancillary facility.

(9) The thirty percent of state sales tax revenue remaining after the appropriation and transfer in subsection (3) of this section shall be appropriated by the Legislature and transferred quarterly beginning in 2014 to the Civic and Community Center Financing Fund.

(10) Except as provided in subsection (11) of this section for a city of the primary class, any municipality that has applied for and received a grant of assistance under the Civic and Community Center Financing Act shall not receive state assistance under the Sports Arena Facility Financing Assistance Act for the same project for which the grant was awarded under the Civic and Community Center Financing Act.

(11) A city of the primary class shall not be eligible to receive a grant of assistance from the Civic and Community Center Financing Act if the city has applied for and received a grant of assistance under the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 14; Laws 2011, LB297, § 9; Laws 2012, LB426, § 2; Laws 2014, LB867, § 3; Laws 2015, LB170, § 1. Effective date August 30, 2015.

Cross References

Civic and Community Center Financing Act, see section 13-2701.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

CHAPTER 14

CITIES OF THE METROPOLITAN CLASS

Article.

1. General Powers. 14-102 to 14-105.
3. Public Improvements.
 - (c) Sewerage, Drainage, Sprinkling, Paving Repair, and Contractors' Bonds. 14-363, 14-364.
 - (g) Streets, Sidewalks, and Highways. 14-392 to 14-3,107.
5. Fiscal Management, Revenue, and Finances.
 - (c) Street Improvement; Bonds; Grading; Assessments. 14-537.
17. Parking Facilities.
 - (c) Offstreet Parking. 14-1733.
21. Public Utilities. 14-2111.

ARTICLE 1

GENERAL POWERS

Section

- 14-102. Additional powers.
 14-103. City council; powers; health regulation; jurisdiction.
 14-105. City council; powers; drainage of lots; duty of owner; special assessment.

14-102 Additional powers.

In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

Taxes, special assessments.

- (1) To levy any tax or special assessment authorized by law;

Corporate seal.

- (2) To provide a corporate seal for the use of the city, and also any official seal for the use of any officer, board, or agent of the city, whose duties require an official seal to be used. Such corporate seal shall be used in the execution of municipal bonds, warrants, conveyances, and other instruments and proceedings as required by law;

Regulation of public health.

- (3) To provide all needful rules and regulations for the protection and preservation of health within the city; and for this purpose they may provide for the enforcement of the use of water from public water supplies when the use of water from other sources shall be deemed unsafe;

Appropriations for debts and expenses.

- (4) To appropriate money and provide for the payment of debts and expenses of the city;

Protection of strangers and travelers.

- (5) To adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person and property;

Concealed weapons, firearms, fireworks, explosives.

(6) To punish and prevent the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act, and the discharge of firearms, fireworks, or explosives of any description within the city, other than the discharge of firearms at a shooting range pursuant to the Nebraska Shooting Range Protection Act;

Sale of foodstuffs.

(7) To regulate the inspection and sale of meats, flour, poultry, fish, milk, vegetables, and all other provisions or articles of food exposed or offered for sale in the city;

Official bonds.

(8) To require all officers or servants elected or appointed to give bond and security for the faithful performance of their duties; but no officer shall become security upon the official bond of another or upon any bond executed to the city;

Official reports of city officers.

(9) To require from any officer of the city at any time a report, in detail, of the transactions of his or her office or any matter connected therewith;

Cruelty to children and animals.

(10) To provide for the prevention of cruelty to children and animals;

Dogs; taxes and restrictions.

(11) To regulate, license, or prohibit the running at large of dogs and other animals within the city as well as in areas within three miles of the corporate limits of the city, to guard against injuries or annoyance from such dogs and other animals, and to authorize the destruction of the dogs and other animals when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals;

Cleaning sidewalks.

(12) To provide for keeping sidewalks clean and free from obstructions and accumulations, to provide for the assessment and collection of taxes on real estate and for the sale and conveyance thereof, and to pay the expenses of keeping the sidewalk adjacent to such real estate clean and free from obstructions and accumulations as herein provided;

Planting and trimming of trees; protection of birds.

(13) To provide for the planting and protection of shade or ornamental and useful trees upon the streets or boulevards, to assess the cost thereof to the extent of benefits upon the abutting property as a special assessment, and to provide for the protection of birds and animals and their nests; to provide for the trimming of trees located upon the streets and boulevards or when the branches of trees overhang the streets and boulevards when in the judgment of the mayor and council such trimming is made necessary to properly light such street or boulevard or to furnish proper police protection and to assess the cost thereof upon the abutting property as a special assessment;

Naming and numbering streets and houses.

(14) To provide for, regulate, and require the numbering or renumbering of houses along public streets or avenues; to care for and control and to name and rename streets, avenues, parks, and squares within the city;

Weeds.

(15) To require weeds and worthless vegetation growing upon any lot or piece of ground within the city or its three-mile zoning jurisdiction to be cut and destroyed so as to abate any nuisance occasioned thereby, to prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or its three-mile zoning jurisdiction and to require the removal thereof so as to abate any nuisance occasioned thereby, and if the owner fails to cut and destroy weeds and worthless vegetation or remove litter, or both, after notice as required by ordinance, to assess the cost thereof upon the lots or lands as a special assessment. The notice required to be given may be by publication in the official newspaper of the city and may be directed in general terms to the owners of lots and lands affected without naming such owners;

Animals running at large.

(16) To prohibit and regulate the running at large or the herding or driving of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits and provide for the impounding of all animals running at large, herded, or driven contrary to such prohibition; and to provide for the forfeiture and sale of animals impounded to pay the expense of taking up, caring for, and selling such impounded animals, including the cost of advertising and fees of officers;

Use of streets.

(17) To regulate the transportation of articles through the streets, to prevent injuries to the streets from overloaded vehicles, and to regulate the width of wagon tires and tires of other vehicles;

Playing on streets and sidewalks.

(18) To prevent or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks or to frighten teams or horses; to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated on the streets of the city;

Combustibles and explosives.

(19) To regulate or prohibit the transportation and keeping of gunpowder, oils, and other combustible and explosive articles;

Public sale of chattels on streets.

(20) To regulate, license, or prohibit the sale of domestic animals or of goods, wares, and merchandise at public auction on the streets, alleys, highways, or any public ground within the city;

Signs and obstruction in streets.

(21) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, posts, awnings, awning posts, scales, or other like purposes; to regulate and prohibit the exhibition or carrying or conveying of banners, placards, advertisements, or the distribution or posting of advertisements or handbills in the streets or public grounds or upon the sidewalks;

Disorderly conduct.

(22) To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places or

otherwise violating the public peace by indecent or disorderly conduct or by lewd and lascivious behavior;

Vagrants and tramps.

(23) To provide for the punishment of vagrants, tramps, common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, or persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves; and to punish trespassers upon private property;

Disorderly houses, gambling, offenses against public morals.

(24) To prohibit, restrain, and suppress tipping shops, houses of prostitution, opium joints, gambling houses, prize fighting, dog fighting, cock fighting, and other disorderly houses and practices, all games and gambling and desecration of the Sabbath, commonly called Sunday, and all kinds of indecencies; to regulate and license or prohibit the keeping and use of billiard tables, ten pins or ball alleys, shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and other similar places of amusement; and to prohibit and suppress all lotteries and gift enterprises of all kinds under whatsoever name carried on, except that nothing in this subdivision shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act;

Police regulation in general.

(25) To make and enforce all police regulations for the good government, general welfare, health, safety, and security of the city and the citizens thereof in addition to the police powers expressly granted herein; and in the exercise of the police power, to pass all needful and proper ordinances and impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance, and to provide for the recovery, collection, and enforcement thereof; and in default of payment to provide for confinement in the city or county prison, workhouse, or other place of confinement with or without hard labor as may be provided by ordinance;

Fast driving on streets.

(26) To prevent horseracing and immoderate driving or riding on the street and to compel persons to fasten their horses or other animals attached to vehicles while standing in the streets;

Libraries, art galleries, and museums.

(27) To establish and maintain public libraries, reading rooms, art galleries, and museums and to provide the necessary grounds or buildings therefor; to purchase books, papers, maps, manuscripts, works of art, and objects of natural or of scientific curiosity, and instruction therefor; to receive donations and bequests of money or property for the same in trust or otherwise and to pass necessary bylaws and regulations for the protection and government of the same;

Hospitals, workhouses, jails, firehouses, etc.; garbage disposal.

(28) To erect, designate, establish, maintain, and regulate hospitals or workhouses, houses of correction, jails, station houses, fire engine houses, asphalt repair plants, and other necessary buildings; and to erect, designate, establish,

maintain, and regulate plants for the removal, disposal, or recycling of garbage and refuse or to make contracts for garbage and refuse removal, disposal, or recycling, or all of the same, and to charge equitable fees for such removal, disposal, or recycling, or all of the same, except as hereinafter provided. The fees collected pursuant to this subdivision shall be credited to a single fund to be used exclusively by the city for the removal, disposal, or recycling of garbage and refuse, or all of the same, including any costs incurred for collecting the fee. Before any contract for such removal, disposal, or recycling is let, the city council shall make specifications therefor, bids shall be advertised for as now provided by law, and the contract shall be let to the lowest and best bidder, who shall furnish bond to the city conditioned upon his or her carrying out the terms of the contract, the bond to be approved by the city council. Nothing in this section, and no contract or regulation made by the city council, shall be so construed as to prohibit any person, firm, or corporation engaged in any business in which garbage or refuse accumulates as a byproduct from selling, recycling, or otherwise disposing of his, her, or its garbage or refuse or hauling such garbage or refuse through the streets and alleys under such uniform and reasonable regulations as the city council may by ordinance prescribe for the removal and hauling of garbage or refuse;

Market places.

(29) To erect and establish market houses and market places and to provide for the erection of all other useful and necessary buildings for the use of the city and for the protection and safety of all property owned by the city; and such market houses and market places and buildings aforesaid may be located on any street, alley, or public ground or on land purchased for such purpose;

Cemeteries, registers of births and deaths.

(30) To prohibit the establishment of additional cemeteries within the limits of the city, to regulate the registration of births and deaths, to direct the keeping and returning of bills of mortality, and to impose penalties on physicians, sextons, and others for any default in the premises;

Plumbing, etc., inspection.

(31) To provide for the inspection of steam boilers, electric light appliances, pipefittings, and plumbings, to regulate their erection and construction, to appoint inspectors, and to declare their powers and duties, except as herein otherwise provided;

Fire limits and fire protection.

(32) To prescribe fire limits and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings or structures or additions thereto erected contrary to such regulations, to provide for the removal of dangerous buildings, and to provide that wooden buildings shall not be erected or placed or repaired in the fire limits; but such ordinance shall not be suspended or modified by resolution nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or corporation or concerning any particular lot or building; to direct that all and any building within such fire limits, when the same shall have been damaged by fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; and to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure

is located or shall be erected, or to collect such costs from the owner of any such building or structure and enforce such collection by civil action in any court of competent jurisdiction;

Building regulations.

(33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing stone, brick, wood, or other buildings and the size and shape of brick and other material placed therein, to prescribe and regulate the construction and arrangement of fire escapes and the placing of iron and metallic shutters and doors therein and thereon, and to provide for the inspection of elevators and hoist-way openings to avoid accidents; to prescribe, regulate, and provide for the inspection of all plumbing, pipefitting, or sewer connections in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passageways of theaters, tenement houses, audience rooms, and all buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building or a manufactory and to cause the same to be removed or placed in safe condition when they are considered dangerous; to regulate and prevent the carrying on of manufactures dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places and to cause such buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure, of soft, shelly, or imperfectly burned brick or other unsuitable building material within the city limits and provide for the inspection of the same; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults and to regulate partition fences; to enforce proper heating and ventilation of buildings used for schools, workhouses, or shops of every class in which labor is employed or large numbers of persons are liable to congregate;

Warehouses and street railways.

(34) To regulate levees, depots and depot grounds, and places for storing freight and goods and to provide for and regulate the laying of tracks and the passage of steam or other railways through the streets, alleys, and public grounds of the city;

Lighting railroad property.

(35) To require the lighting of any railway within the city, the cars of which are propelled by steam, and to fix and determine the number, size, and style of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location for such lampposts; and in case any company owning or operating such railways shall fail to comply with such requirements, the council may cause the same to be done and may assess the expense thereof against such company, and the same shall constitute a lien upon any real estate belonging to such company and lying within such city and may be collected in the same manner as taxes for general purposes;

City publicity.

(36) To provide for necessary publicity and to appropriate money for the purpose of advertising the resources and advantages of the city;

Offstreet parking.

(37) To erect, establish, and maintain offstreet parking areas on publicly owned property located beneath any elevated segment of the National System of Interstate and Defense Highways or portion thereof, or public property title to which is in the city on May 12, 1971, or property owned by the city and used in conjunction with and incidental to city-operated facilities, and to regulate parking thereon by time limitation devises or by lease;

Public passenger transportation systems.

(38) To acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, operate, or contract for the operation of public passenger transportation systems, excluding taxicabs and railroad systems, including all property and facilities required therefor, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city therein, to exercise all powers granted by the Constitution of Nebraska and laws of the State of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto, including, but not limited to, receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act, to contract with an operating and management company for the purpose of operating, servicing, and maintaining any public passenger transportation systems any city of the metropolitan class shall acquire, and to exercise such other and further powers as may be necessary, incident, or appropriate to the powers of such city; and

Regulation of air quality.

(39) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, to implement and enforce an air pollution control program within the corporate limits of the city under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

Source: Laws 1921, c. 116, art. I, § 2, p. 398; C.S.1922, § 3489; C.S.1929, § 14-102; R.S.1943, § 14-102; Laws 1963, c. 314, § 1, p. 945; Laws 1971, LB 237, § 1; Laws 1972, LB 1274, § 1; Laws 1974, LB 768, § 1; Laws 1981, LB 501, § 1; Laws 1986, LB 1027, § 186; Laws 1991, LB 356, § 1; Laws 1991, LB 849, § 59; Laws 1992, LB 1257, § 63; Laws 1993, LB 138, § 61; Laws 1993, LB 623, § 1; Laws 1997, LB 814, § 2; Laws 1999, LB 87, § 59; Laws

2008, LB806, § 1; Laws 2009, LB430, § 1; Laws 2009, LB503, § 11; Laws 2015, LB266, § 1.
 Effective date August 30, 2015.

Cross References

- Concealed Handgun Permit Act**, see section 69-2427.
- Interlocal Cooperation Act**, see section 13-801.
- Joint Public Agency Act**, see section 13-2501.
- Nebraska Bingo Act**, see section 9-201.
- Nebraska Lottery and Raffle Act**, see section 9-401.
- Nebraska Pickle Card Lottery Act**, see section 9-301.
- Nebraska Shooting Range Protection Act**, see section 37-1301.
- Nebraska Small Lottery and Raffle Act**, see section 9-501.
- State Lottery Act**, see section 9-801.

14-103 City council; powers; health regulation; jurisdiction.

The council shall have power to define, regulate, suppress and prevent nuisances. The council may create a board of health in cases of a general epidemic or may cooperate with the boards of health provided by the laws of this state. The council may provide rules and regulations for the care, treatment, regulation, and prevention of all contagious and infectious diseases, for the regulation of all hospitals, dispensaries, and places for the treatment of the sick, for the sale of dangerous drugs, for the regulation of cemeteries, and the burial of the dead. The jurisdiction of the council in enforcing the foregoing regulations shall extend over such city and within its three-mile zoning jurisdiction.

Source: Laws 1921, c. 116, art. I, § 3, p. 406; C.S.1922, § 3490; C.S.1929, § 14-103; R.S.1943, § 14-103; Laws 2015, LB266, § 2.
 Effective date August 30, 2015.

14-105 City council; powers; drainage of lots; duty of owner; special assessment.

The city council may require any and all lots or pieces of ground within the city to be drained, filled, or graded, and upon the failure of the owners of such lots or pieces of ground to comply with such requirements, after thirty days' notice in writing, the council may cause the lots or pieces of ground to be drained, filled, or graded, and the cost and expense thereof shall be levied upon the property so filled, drained, or graded and shall be equalized, assessed, and collected as a special assessment.

Source: Laws 1921, c. 116, art. I, § 5, p. 407; C.S.1922, § 3492; C.S.1929, § 14-105; R.S.1943, § 14-105; Laws 2015, LB361, § 1.
 Effective date August 30, 2015.

ARTICLE 3

PUBLIC IMPROVEMENTS

**(c) SEWERAGE, DRAINAGE, SPRINKLING, PAVING
 REPAIR, AND CONTRACTORS' BONDS**

- Section 14-363. Street sprinkling or armor-coating districts; creation; contracts; bids; special assessments; collection.
- 14-364. Paving repair plant; establishment; cost of operation; payment.
 (g) **STREETS, SIDEWALKS, AND HIGHWAYS**
- 14-392. Streets; improvements; assessment of cost.

Section

- 14-398. Streets; change of grade; special assessment; how determined.
- 14-3,102. Streets; improvements; notice; service; protest; effect; special assessment.
- 14-3,103. Sidewalks; construction or repair; required, when; assessment of cost; equalization.
- 14-3,106. Sidewalks; construction or repair; special assessment; failure of owner; effect.
- 14-3,107. Streets; vacation; narrow; reversion to abutting owners; improvements; assessment of benefits; vacation of minimal secondary right-of-way; procedure.

(c) SEWERAGE, DRAINAGE, SPRINKLING, PAVING
REPAIR, AND CONTRACTORS' BONDS

14-363 Street sprinkling or armor-coating districts; creation; contracts; bids; special assessments; collection.

The city council may provide for the sprinkling or armor coating of the streets of the city and, for the purpose of accomplishing such work, may by ordinance create suitable districts to be designated sprinkling or armor-coating districts and may order and direct the work, including preparatory grading, to be done upon any or all of the streets in the districts. The work shall be done upon contract in writing let upon advertisement to the lowest responsible bidder. Such advertisement shall specify the district or districts proposed to be so worked, especially describing such district or districts, and bids shall be made and contracts let with reference to such district or districts so specified. For the purpose of paying the cost of the work contemplated and contracted for, the city council may levy and assess the cost upon all lots, lands, and real estate in the district, such tax or assessment to be equal and uniform upon all front footage or property within or abutting upon the streets within the district so created. The assessment shall be a lien upon all such lots, lands, and real estate and shall be enforced and collected as a special assessment.

Source: Laws 1921, c. 116, art. III, § 54, p. 456; C.S.1922, § 3607; C.S.1929, § 14-355; R.S.1943, § 14-363; Laws 1991, LB 745, § 1; Laws 2015, LB361, § 2.
Effective date August 30, 2015.

14-364 Paving repair plant; establishment; cost of operation; payment.

The city council may establish and maintain a paving repair plant and may pave or repair paving. The cost of such repairs may be paid from the funds of the city or may be assessed upon the abutting property, except that the cost may be assessed against abutting property only following the creation of a paving repair or repaving district established and assessed as a special assessment in the same manner provided for a sprinkling or armor-coating district by section 14-363. The assessable paving repairs shall be only those made with asphaltic concrete on streets in previously developed areas which were not constructed to city permanent design standards.

Source: Laws 1921, c. 116, art. III, § 55, p. 456; C.S.1922, § 3608; C.S.1929, § 14-356; R.S.1943, § 14-364; Laws 1991, LB 745, § 2; Laws 2015, LB361, § 3.
Effective date August 30, 2015.

(g) STREETS, SIDEWALKS, AND HIGHWAYS

14-392 Streets; improvements; assessment of cost.

For the purpose of covering in whole or in part the costs of any of the improvements and costs incident thereto, authorized in sections 14-384 to 14-3,127, including grading done in combination with any other improvements, the city may assess the property within the improvement district or the property benefited by change of grade or grading when not made in combination with other improvements, to the full extent of the special benefits thereby conferred upon the respective lots, tracts, and parcels of land, or if the city council finds that there are common benefits enjoyed by the public at large without reference to the ownership of property abutting or adjacent to the improvement or improvements, or that there is a common benefit to the property embraced within the district or districts, the city may assess the costs of such improvement or improvements against all the property included in such district or districts, according to such rules as the city council sitting as a board of equalization, shall adopt for the distribution or adjustment of the costs of the improvement or improvements. All such assessments shall be equalized, levied, and collected as special assessments.

Source: Laws 1959, c. 36, § 9, p. 199; Laws 1969, c. 60, § 5, p. 367; Laws 2015, LB361, § 4.
Effective date August 30, 2015.

14-398 Streets; change of grade; special assessment; how determined.

Under the methods provided in sections 14-384 to 14-3,127 to grade streets, boulevards, highways, main thoroughfares, controlled-access facilities, connecting links, major traffic streets, alleys, and parts thereof, any number of intersecting and connecting streets reasonably required and proper and necessary to the better and improved use of the streets may be authorized to be graded in one and the same proceeding. The cost thereof as provided in sections 14-384 to 14-3,127 may be assessed upon property specially benefited as a special assessment. In such instances, in determining the sufficiency of either an authorized protest or petition, the total frontage of taxable property on all sides on all of the streets to be graded shall be taken into consideration.

Source: Laws 1959, c. 36, § 15, p. 201; Laws 2015, LB361, § 5.
Effective date August 30, 2015.

14-3,102 Streets; improvements; notice; service; protest; effect; special assessment.

Whenever it is desired to make any improvement or improvements authorized in section 14-385, where the costs of such improvement or improvements are to be assessed against the adjacent and abutting property benefited thereby, and no petition has been filed therefor in accordance with section 14-391, the city for that purpose may propose such improvement or improvements stating the specific character of the improvement or improvements thus to be made. The city shall cause to be published in the official newspaper a brief notice of such proposal stating the character of the improvement or improvements proposed thereby, and shall give additional notice to the property owners in the district or districts, or proposed district or districts, as required by section 25-520.01. If within thirty days thereafter the owners of fifty-one percent of the

taxable property abutting upon the street or streets, or part or parts thereof proposed to be improved protest against such project, such work shall not be done. In the absence of such protest, the city shall be authorized to proceed with the work as proposed. The cost and expense thereof, as provided by law, may be assessed against the property within the district or districts specially benefited to the extent of such benefits as a special assessment. Where assessment against the property within the district or districts specially benefited is not made, or where the improvement or improvements are on a main thoroughfare, major traffic street, or connecting link, or made pursuant to sections 14-3,103 to 14-3,106, this section shall not apply.

Source: Laws 1959, c. 36, § 19, p. 202; Laws 1963, c. 46, § 1, p. 222; Laws 1969, c. 60, § 7, p. 369; Laws 2015, LB361, § 6.
Effective date August 30, 2015.

14-3,103 Sidewalks; construction or repair; required, when; assessment of cost; equalization.

The city may construct or repair sidewalks along any street or part thereof, or any boulevard or part thereof, of such material and in such manner as it deems necessary and assess the cost thereof upon abutting property. Such assessments except for temporary sidewalks and sidewalk repairs shall be equalized and levied as special assessments. The city shall cause the construction of sidewalks on at least one side of every major traffic street and main thoroughfare in the city, excluding freeways, expressways, controlled-access facilities, and other streets deemed by the city to demonstrate no or very limited demand for pedestrian use, and may assess the cost thereof upon abutting property. Such construction shall be completed within a reasonable time, based upon an annual review of construction program priorities and available funding sources.

Source: Laws 1959, c. 36, § 20, p. 203; Laws 1971, LB 237, § 2; Laws 1984, LB 992, § 1; Laws 2015, LB361, § 7.
Effective date August 30, 2015.

14-3,106 Sidewalks; construction or repair; special assessment; failure of owner; effect.

In case the owner or owners shall fail to construct or repair such sidewalk as directed, the city may construct or repair such sidewalk or cause the same to be done and assess the cost thereof upon the abutting property as special assessments. Where the owner or owners of abutting property fail to keep in repair the sidewalk adjacent thereto, they shall be liable for all damages or injuries occasioned or recovered by reason of the defective or dangerous condition of such sidewalk.

Source: Laws 1959, c. 36, § 23, p. 204; Laws 2015, LB361, § 8.
Effective date August 30, 2015.

14-3,107 Streets; vacation; narrow; reversion to abutting owners; improvements; assessment of benefits; vacation of minimal secondary right-of-way; procedure.

(1) Except as provided in subsection (2) of this section, the city may vacate or narrow any street, highway, main thoroughfare, controlled-access facility, connecting link, boulevard, major traffic street, or alley upon petition of the owners

of seventy-five percent of the taxable frontage feet abutting upon such street or alley proposed to be vacated and asking for such vacation, or the city, for purposes of construction of a controlled-access highway or to conform to a master plan of the city, may, without petition having been filed therefor, vacate any street or alley or any part thereof in the city. Whenever a street is vacated or narrowed, the part so vacated shall revert to the abutting owners on the respective sides thereof, except that if part or all of the vacated street lies within the State of Nebraska but one side or any part of the street is adjacent to the boundary of the State of Nebraska, all of the street lying within the State of Nebraska or that part lying within the State of Nebraska shall revert to the owner of the abutting property lying wholly within the State of Nebraska. The city may open, improve, and make passable any street, highway, boulevard, main thoroughfare, controlled-access facility, connecting link, major traffic street, or alley. For purposes of this subsection, open refers to the adaptation of the surface of the street to the needs of ordinary travel but does not necessarily require the grading to an established grade. The costs of any of the improvements mentioned in this subsection, except as otherwise provided in sections 14-384 to 14-3,127, to the extent of special benefits thereby conferred, may be assessed against the property specially benefited thereby as special assessments. When the city vacates all or any portion of a street, highway, main thoroughfare, controlled-access facility, connecting link, boulevard, major traffic street, or alley pursuant to this subsection, the city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

(2) The city may vacate any minimal secondary right-of-way in the manner described in this subsection. The city may vacate any segment of such right-of-way by ordinance without petition and without convening any committee for the purpose of determining any damages if all affected abutting properties have primary access to an otherwise open and passable public street right-of-way. An abutting property shall not be determined to have primary access if such abutting property has an existing garage and such garage is not accessible without altering or relocating such garage. Title to such vacated rights-of-way shall vest in the owners of abutting property and become a part of such property, each owner taking title to the center line of such vacated street or alley adjacent to such owner's property subject to the following: (a) There is reserved to the city the right to maintain, operate, repair, and renew sewers now existing there and (b) there is reserved to the public utilities and cable television systems the right to maintain, repair, renew, and operate installed water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances above, on, and below the surface of the ground for the purpose of serving the general public or abutting properties, including such lateral connection or branch lines as may be ordered or permitted by the city or such other utility or cable television system and to enter upon the premises to accomplish such purposes at any and all reasonable times. The city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots. For

purposes of this subsection, minimal secondary right-of-way means any street or alley which either is unpaved, has substandard paving, or has pavement narrower than sixteen feet and which is a secondary means of access to or from any property abutting the portion to be vacated.

Source: Laws 1959, c. 36, § 24, p. 204; Laws 1967, c. 43, § 1, p. 173; Laws 2001, LB 483, § 2; Laws 2003, LB 97, § 1; Laws 2015, LB361, § 9.
Effective date August 30, 2015.

ARTICLE 5

FISCAL MANAGEMENT, REVENUE, AND FINANCES

(c) STREET IMPROVEMENT; BONDS; GRADING; ASSESSMENTS

Section

14-537. Special assessments; when payable; rate of interest; collection and enforcement.

(c) STREET IMPROVEMENT; BONDS; GRADING; ASSESSMENTS

14-537 Special assessments; when payable; rate of interest; collection and enforcement.

Special assessments for improving the streets, alleys, sewers, and sidewalks within any improvement district, except where otherwise provided, shall be made in accordance with this section. The total cost of improvements shall be levied at one time upon the property and become delinquent as provided in this section. The city may require that the total amount of such assessment be paid in less than ten years if, in each year of the payment schedule, the maximum amount payable, excluding interest, is five hundred dollars. If the total amount is more than five thousand dollars, then it shall become delinquent as follows: One-tenth of the total amount shall be delinquent in fifty days after such levy; one-tenth in one year; one-tenth in two years; one-tenth in three years; one-tenth in four years; one-tenth in five years; one-tenth in six years; one-tenth in seven years; one-tenth in eight years; and one-tenth in nine years. Each of the installments except the first shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of levy until the installment becomes delinquent and, after the installment becomes delinquent, shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, payable in advance, as in other cases of special assessments. Such special assessments shall also be collected and enforced as in other cases of special assessments.

Source: Laws 1921, c. 116, art. IV, § 25, p. 482; C.S.1922, § 3651; C.S.1929, § 14-528; Laws 1933, c. 136, § 12, p. 523; C.S.Supp.,1941, § 14-528; R.S.1943, § 14-537; Laws 1959, c. 38, § 1, p. 214; Laws 1963, c. 48, § 1, p. 224; Laws 1980, LB 933, § 4; Laws 1981, LB 167, § 5; Laws 1991, LB 745, § 5; Laws 2015, LB361, § 10.
Effective date August 30, 2015.

ARTICLE 17

PARKING FACILITIES

(c) OFFSTREET PARKING

Section

14-1733. Offstreet parking; cost; revenue bonds; parking district assessments; gifts, leases, devises, grants, funds, agreements; conditions; procedure.

(c) OFFSTREET PARKING

14-1733 Offstreet parking; cost; revenue bonds; parking district assessments; gifts, leases, devises, grants, funds, agreements; conditions; procedure.

In order to pay the cost required by any purchase, construction, or lease of property and equipping of such facilities, or the enlargement of presently owned facilities, the city may: (1) Issue revenue bonds to provide the funds for such improvements. Such revenue bonds shall be a lien only upon the revenue and earnings of parking facilities and onstreet parking meters. Such revenue bonds shall mature in no more than forty years and shall be sold at public or private sale. Any such revenue bonds which may be issued shall not be included in computing the maximum amount of bonds which the issuing city of the metropolitan class may be authorized to issue under its charter or any statute of this state. Such revenue bonds may be issued and sold or delivered to the contractor at par and accrued interest for the amount of work performed. The city may pledge the revenue from any facility or parking meters as security for the bonds; (2) upon an initiative petition of the majority of the record owners of taxable property included in a proposed parking district, create, by ordinance, parking districts and delineate the boundaries thereof. If the city council finds that there are common benefits enjoyed by the public at large without reference to the ownership of property, or that there is a common benefit to the property encompassed within a parking district or districts, the city may assess the costs of such improvement or improvements as special assessments against all the property included in such district or districts, according to such rules as the city council, sitting as a board of equalization, shall adopt for the distribution or adjustment of the costs of such improvement or improvements. All such special assessments shall be equalized, levied, and collected as special assessments. Special assessments levied pursuant to this section shall be due, payable, and bear interest as the city council shall determine by ordinance. Installment payments shall not be allowed for any period in excess of twenty years; or (3) use, independently or together with revenue derived pursuant to subdivision (1) or (2) of this section, gifts, leases, devises, grants, federal or state funds, or agreements with other public entities.

No real property shall be included in any parking district created pursuant to this section when the zoning district in which such property is located is a residential zoning district or a district where the predominant type of land use authorized is residential in nature.

Source: Laws 1971, LB 238, § 3; Laws 1977, LB 238, § 2; Laws 1979, LB 181, § 1; Laws 1980, LB 703, § 1; Laws 2015, LB361, § 11.
Effective date August 30, 2015.

ARTICLE 21
PUBLIC UTILITIES

Section

14-2111. Utilities district; employees; retirement and other benefits; terms and conditions; reports.

14-2111 Utilities district; employees; retirement and other benefits; terms and conditions; reports.

(1) The board of directors of any metropolitan utilities district may also provide benefits for, insurance of, and annuities for the present and future employees and appointees of the district covering accident, disease, death, total and permanent disability, and retirement, all or any of them, under such terms and conditions as the board may deem proper and expedient from time to time. Any retirement plan adopted by the board of directors shall be upon some contributory basis requiring contributions by both the district and the employee or appointee, except that the district may pay the entire cost of the fund necessary to cover service rendered prior to the adoption of any new retirement plan. Any retirement plan shall take into consideration the benefits provided for employees and appointees of metropolitan utilities districts under the Social Security Act, and any benefits provided under a contributory retirement plan shall be supplemental to the benefits provided under the Social Security Act as defined in section 68-602 if the employees entitled to vote in a referendum vote in favor of old age and survivors' insurance coverage. To effectuate any plan adopted pursuant to this authority, the board of directors of the district is empowered to establish and maintain reserves and funds, provide for insurance premiums and costs, and make such delegation as may be necessary to carry into execution the general powers granted by this section. Payments made to employees and appointees, under the authority in this section, shall be exempt from attachment or other legal process and shall not be assignable.

(2) Any retirement plan adopted by the board of directors of any metropolitan utilities district may allow the district to pick up the employee contribution required by this section for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the employer shall continue to withhold federal income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, such contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The employer shall pay the employee contributions from the same source of funds which is used in paying earnings to the employees. The employer shall pick up the contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Employee contributions picked up shall be treated in the same manner and to the same extent as employee contributions made prior to the date picked up.

(3)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts

may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the board of directors of any metropolitan utilities district shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the board of directors does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the metropolitan utilities district. All costs of the audit shall be paid by the metropolitan utilities district. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1919, c. 33, § 3, p. 108; C.S.1922, § 3759; C.S.1929, § 14-1015; Laws 1941, c. 20, § 1, p. 110; C.S.Supp.,1941, § 14-1015; Laws 1943, c. 38, § 1(2), p. 181; R.S.1943, § 14-1022; Laws 1951, c. 31, § 1, p. 129; Laws 1955, c. 25, § 1, p. 118; Laws 1985, LB 353, § 1; R.S.1943, (1991), § 14-1022; Laws 1992, LB 746, § 11; Laws 1995, LB 574, § 16; Laws 1998, LB 1191, § 16; Laws 1999, LB 795, § 5; Laws 2011, LB474, § 5; Laws 2012, LB916, § 1; Laws 2014, LB759, § 6; Laws 2015, LB40, § 1. Effective date August 30, 2015.

CHAPTER 15

CITIES OF THE PRIMARY CLASS

Article.

2. General Powers. 15-211 to 15-268.
7. Public Improvements. 15-709 to 15-718.

ARTICLE 2

GENERAL POWERS

Section

- 15-211. Lots; drainage; costs; special assessment.
 15-241. Cemeteries; conveyance of lots.
 15-268. Weeds; destruction and removal; procedure; special assessment.

15-211 Lots; drainage; costs; special assessment.

A city of the primary class may, by ordinance, require any and all lots or pieces of ground within the city or within its three-mile zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. Upon the failure of the owners of such lots or pieces of ground to fill or drain the lots or pieces when so required, the council may cause such lots or pieces of ground to be drained or filled, and the cost and expenses thereof shall be levied upon the property so filled or drained and collected as a special assessment.

Source: Laws 1901, c. 16, § 129, XII, p. 130; R.S.1913, § 4424; C.S.1922, § 3808; C.S.1929, § 15-211; R.S.1943, § 15-211; Laws 2015, LB266, § 3; Laws 2015, LB361, § 12.
 Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB266, section 3, with LB361, section 12, to reflect all amendments.

15-241 Cemeteries; conveyance of lots.

A city of the primary class may convey cemetery lots owned by such city by certificates signed by the mayor and countersigned by the clerk under seal of the city, specifying that the person to whom the same is issued is owner of the lot or lots described therein by number as laid down on such plat or map, for the purpose of interment. Such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot or lots for the sole purpose of interment under the regulations of the city council.

Source: Laws 1901, c. 16, § 129, XLI, p. 137; R.S.1913, § 4451; C.S.1922, § 3836; C.S.1929, § 15-239; R.S.1943, § 15-241; Laws 2015, LB241, § 1.
 Effective date August 30, 2015.

15-268 Weeds; destruction and removal; procedure; special assessment.

A city of the primary class may provide for the destruction and removal of weeds and worthless vegetation growing upon any lot or lots or lands within the corporate limits of such city or within its three-mile zoning jurisdiction or

upon the streets and alleys abutting upon any lot or lots or lands, and such city may require the owner or owners of such lot or lots or lands to destroy and remove such weeds and worthless vegetation therefrom and from the streets and alleys abutting thereon. If, after five days' notice by publication, by certified United States mail, or by the conspicuous posting of the notice on the lot or land upon which the nuisance exists, the owner or owners fail, neglect, or refuse to destroy or remove the nuisance, the city, through its proper officers, shall destroy and remove the nuisance, or cause the nuisance to be destroyed or removed, from the lot or lots or lands and streets and alleys abutting thereon and shall assess the cost thereof against such lot or lots or lands as a special assessment.

Source: Laws 1915, c. 215, § 1, p. 484; C.S.1922, § 3863; C.S.1929, § 15-266; R.S.1943, § 15-268; Laws 1988, LB 973, § 1; Laws 2009, LB495, § 2; Laws 2015, LB266, § 4; Laws 2015, LB361, § 13.

Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB266, section 4, with LB361, section 13, to reflect all amendments.

ARTICLE 7

PUBLIC IMPROVEMENTS

Section

- 15-709. Streets; improvements; utility service connections; duty of landowner; special assessment.
 15-713. Curbing gutter bonds; special assessment.
 15-718. Sewers and drains; construction; assessment of benefits; collection.

15-709 Streets; improvements; utility service connections; duty of landowner; special assessment.

The city council may order the owner of lots abutting on a street that is to be paved to lay sewer, gas, and water service pipes to connect mains. If the owner fails to lay such pipes, after five days' notice by publication in a newspaper of general circulation in the city, or in place thereof by personal service of such notice, as the council in its discretion may direct, the council may cause the sewer, gas, and water service pipes to be laid as part of the work of the improvement district and assess the cost thereof on the property of such owner as a special assessment. Such assessment to pay the cost of the pavement or improvements in the improvement district shall be collected and enforced as a special assessment.

Source: Laws 1901, c. 16, § 97, p. 106; Laws 1905, c. 16, § 9, p. 209; Laws 1913, c. 5, p 4, p. 61; R.S.1913, § 4524; Laws 1915, c. 82, § 1, p. 209; Laws 1917, c. 94, § 1, p. 250; C.S.1922, § 3910; C.S.1929, § 15-703; R.S.1943, § 15-709; Laws 2015, LB361, § 14.

Effective date August 30, 2015.

15-713 Curbing gutter bonds; special assessment.

To pay the cost of curbing and guttering public ways the city council may issue bonds called curbing gutter bonds, district No., payable in not more than twenty years or at the option of the city at any interest-paying date, and assess the cost, not exceeding the special benefits, on abutting property as

special assessments. Such assessments shall become due, delinquent, draw interest, and be subject to like penalty and collected as special assessments and shall constitute a sinking fund for the payment of such bonds. No paving bonds and no curbing gutter bonds shall be sold or delivered until necessary to make payments for work done on such improvements.

Source: Laws 1901, c. 16, § 97, p. 107; Laws 1905, c. 16, § 9, p. 210; Laws 1913, c. 5, § 4, p. 60; R.S.1913, § 4524; Laws 1915, c. 82, § 1, p. 210; Laws 1917, c. 94, § 1, p. 251; C.S.1922, § 3910; C.S.1929, § 15-703; R.S.1943, § 15-713; Laws 1969, c. 51, § 24, p. 287; Laws 2015, LB361, § 15.
Effective date August 30, 2015.

15-718 Sewers and drains; construction; assessment of benefits; collection.

Special assessments may be levied by the city council for the purpose of paying the cost of constructing such sewers and drains within the city. Such assessments shall be levied upon the real estate within the sewerage districts in which such sewer or drain may be, to the extent of benefits to such property by reason of such improvements. The benefits to such property shall be determined by the city council as in other cases of special assessments. All assessments made for sewerage or drainage purposes shall be levied and collected as special assessments.

Source: Laws 1901, c. 16, § 101, p. 108; Laws 1907, c. 9, § 10, p. 81; R.S.1913, § 4528; C.S.1922, § 3914; C.S.1929, § 15-707; R.S. 1943, § 15-718; Laws 1969, c. 66, § 7, p. 381; Laws 2015, LB361, § 16.
Effective date August 30, 2015.



CHAPTER 16

CITIES OF THE FIRST CLASS

Article.

- 2. General Powers. 16-207 to 16-250.
- 6. Public Improvements.
 - (b) Streets. 16-615 to 16-652.
 - (d) Sidewalks. 16-664.
 - (e) Water and Sewer Districts. 16-669, 16-672.
- 7. Fiscal Management, Revenue, and Finances. 16-708.
- 10. Retirement Systems.
 - (a) Police Officers Retirement Act. 16-1019.
 - (b) Firefighters Retirement. 16-1038.

ARTICLE 2

GENERAL POWERS

Section

- 16-207. Streets and sidewalks; regulation; declaration of nuisance; procedure; special assessment.
- 16-222.02. Employment of full-time fire chief; appointment; duties.
- 16-230. Drainage; nuisance; weeds; litter; removal; notice; action by city council; hearing; violation; penalty; civil action; special assessment.
- 16-240. Health; sanitary regulations.
- 16-243. Cemeteries; lots; how conveyed; title.
- 16-250. Sidewalks; sewers; drains; construction and repair; special assessments.

16-207 Streets and sidewalks; regulation; declaration of nuisance; procedure; special assessment.

(1) A city of the first class may by ordinance provide for the removal of all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the owners or occupants of the grounds fronting thereon or at the expense of the person placing the obstruction and may require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of the trees.

(2) A city of the first class may by ordinance declare it to be a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the city or within its two-mile zoning jurisdiction. Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within thirty days after the receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing or fails to comply with the order to abate and remove the nuisance, the city may have such work done and may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment.

(3) The city may also regulate the building of bulkheads, cellars, basements, ways, stairways, railways, windows, doorways, awnings, hitching posts and

rails, lampposts, awning posts, and all other structures projecting upon or over any adjoining excavation through and under the sidewalks in the city.

Source: Laws 1901, c. 18, § 48, XI, p. 247; R.S.1913, § 4823; C.S.1922, § 3991; C.S.1929, § 16-208; R.S.1943, § 16-207; Laws 1994, LB 695, § 5; Laws 2015, LB266, § 5; Laws 2015, LB361, § 17.
Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB266, section 5, with LB361, section 17, to reflect all amendments.

16-222.02 Employment of full-time fire chief; appointment; duties.

Each city of the first class with a population in excess of thirty-seven thousand five hundred inhabitants shall employ a full-time fire chief with appropriate training, credentials, and experience and for whom firefighting or emergency medical first response is a full-time career. The fire chief shall be appointed under the Civil Service Act by the mayor with the approval of the city council or by the city manager in cities that have adopted the city manager plan of government. The fire chief shall have the immediate superintendence of the fire prevention, fire suppression, and emergency medical first response services and the facilities and equipment related to such services of the city. The fire chief shall promulgate, implement, and enforce rules governing the actions and conduct of volunteer members of the department so as to be in conformity with the personnel policies of the city.

Source: Laws 2008, LB1096, § 2; Laws 2015, LB455, § 1.
Effective date August 30, 2015.

Cross References

Civil Service Act, see section 19-1825.

16-230 Drainage; nuisance; weeds; litter; removal; notice; action by city council; hearing; violation; penalty; civil action; special assessment.

(1) A city of the first class by ordinance may require lots or pieces of ground within the city or within the city's two-mile zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. The city may require the owner or occupant of all lots and pieces of ground within the city to keep the lots and pieces of ground and the adjoining streets and alleys free of excessive growth of weeds, grasses, or worthless vegetation, and it may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or within the city's two-mile zoning jurisdiction.

(2) Any city of the first class may by ordinance declare it to be a nuisance to permit or maintain excessive growth of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles. The city shall establish by ordinance the height at which weeds, grasses, or worthless vegetation are a nuisance.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five

days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;

(b) Weeds includes, but is not limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus sp.*) (toun), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*); and

(c) Weeds, grasses, and worthless vegetation does not include vegetation applied or grown on a lot or piece of ground outside the corporate limits of the city but inside the city's two-mile zoning jurisdiction expressly for the purpose of weed or erosion control.

Source: Laws 1901, c. 18, § 48, XXXVII, p. 255; R.S.1913, § 4846; Laws 1915, c. 84, § 1, p. 222; C.S.1922, § 4014; C.S.1929, § 16-231; R.S.1943, § 16-230; Laws 1975, LB 117, § 1; Laws 1988, LB 934, § 2; Laws 1991, LB 330, § 1; Laws 1995, LB 42, § 2; Laws 2004, LB 997, § 1; Laws 2009, LB495, § 5; Laws 2013, LB643, § 1; Laws 2015, LB266, § 6; Laws 2015, LB361, § 18.
Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB266, section 6, with LB361, section 18, to reflect all amendments.

16-240 Health; sanitary regulations.

A city of the first class by ordinance may make regulations to secure the general health of the city, prescribe rules for the prevention, abatement, and

removal of nuisances, make and prescribe regulations for the construction, location, and keeping in order of all slaughterhouses, stockyards, warehouses, sheds, stables, barns, dairies, or other places where offensive matter is kept, or is likely to accumulate, within the city or within its two-mile zoning jurisdiction, and to limit or fix the maximum number of swine or neat cattle that may be kept in sheds, stables, barns, feed lots, or other enclosures.

Source: Laws 1901, c. 18, § 48, XLVI, p. 257; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4856; Laws 1919, c. 37, § 1, p. 119; C.S.1922, § 4024; C.S.1929, § 16-241; R.S.1943, § 16-240; Laws 2015, LB266, § 7.

Effective date August 30, 2015.

16-243 Cemeteries; lots; how conveyed; title.

A city of the first class may convey cemetery lots owned by such city, by certificates signed by the mayor and countersigned by the clerk under the seal of the city specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such plat or map, for the purpose of interment. Such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple of such lot for the sole purpose of interment, under the regulations of the city council.

Source: Laws 1901, c. 18, § 48, XLIX, p. 258; R.S.1913, § 4859; C.S.1922, § 4027; C.S.1929, § 16-244; R.S.1943, § 16-243; Laws 2015, LB241, § 2.

Effective date August 30, 2015.

16-250 Sidewalks; sewers; drains; construction and repair; special assessments.

A city of the first class may construct or repair sidewalks, sewers, and drains on any highway in the city, construct or repair iron railings or gratings for areaways, cellars, or entrances to basements of buildings, and levy a special assessment on lots or parcels of land fronting on such sidewalk, waterway, highway, or alley to pay the expense of such improvements, to be assessed as a special assessment. Unless a majority of the owners of the property subject to assessment for such improvements petition the council to make the improvements, such improvements shall not be made until three-fourths of all the members of the city council, by vote, assent to the making of the improvements, which vote, by yeas and nays, shall be entered of record.

Source: Laws 1901, c. 18, § 48, VI, p. 246; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4866; C.S.1922, § 4034; C.S.1929, § 16-251; R.S. 1943, § 16-250; Laws 2015, LB361, § 19.

Effective date August 30, 2015.

Cross References

Manner of assessment, see section 16-666.

ARTICLE 6
PUBLIC IMPROVEMENTS

(b) STREETS

Section

- 16-615. Grade or change of grade; procedure; damages; how ascertained; special assessments.
 16-630. Curbing and guttering bonds; interest rate; special assessments; how levied.
 16-631. Curbing and guttering; cost; paving bonds may include; special assessment.
 16-652. Grading; special assessments; when delinquent.

(d) SIDEWALKS

- 16-664. Construction; cost; special assessment; levy; when delinquent; payment.

(e) WATER AND SEWER DISTRICTS

- 16-669. Special assessments; when delinquent; interest; future installments; collection.
 16-672. Special assessments; equalization; reassessment.

(b) STREETS

16-615 Grade or change of grade; procedure; damages; how ascertained; special assessments.

(1) The mayor and city council may establish the grade of any street, avenue, or alley in the city or within a county industrial area as defined in section 13-1111 contiguous to such city. When the grade of any street, avenue, or alley has been established, the grade of all or any part shall not be changed unless the city clerk has sent notice of the proposed change in grade to the owners of the lots or land abutting upon the street, avenue, or alley or part of a street, avenue, or alley where such change of grade is to be made. The notice shall be sent to the addresses of the owners as they appear in the office of the register of deeds upon the date of the mailing of the notice. The notice shall be sent by regular United States mail, postage prepaid, postmarked at least twenty-one days before the date upon which the city council takes final action on approval of the ordinance authorizing the change in grade. The notice shall inform the owner of the nature of the proposed change, that final action by the city council is pending, and of the location where additional information on the project may be obtained. Following the adoption of an ordinance changing the grade of all or any part of a street, avenue, or alley, no change in grade shall be made until the damages to property owners which may be caused by such change of grade are determined as provided in sections 76-704 to 76-724.

(2) For the purpose of paying the damages, if any, so awarded, the mayor and city council may borrow money from any available fund in the amount necessary, which amount, upon the collection of such amount by special assessment, shall be transferred from such special fund to the fund from which it has been borrowed. No street, avenue, or alley shall be worked to such grade or change of grade until the damages so assessed shall be tendered to such property owners or their agents. Before the mayor and city council enter into any contract to grade any such street, avenue, or alley, the damages, if any, sustained by the property owners, shall be ascertained by condemnation proceedings. For the purpose of paying the damages awarded and the costs of the condemnation proceedings, the mayor and city council may levy a special assessment upon the lots and lands abutting upon such street, avenue, or alley,

or part thereof, so graded, as adjudged by the mayor and council to be especially benefited in proportion to such benefits. Such assessment shall be collected as other special assessments.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4914; C.S.1922, § 4082; C.S.1929, § 16-611; R.S.1943, § 16-615; Laws 1951, c. 101, § 51, p. 470; Laws 1969, c. 81, § 1, p. 412; Laws 1995, LB 196, § 1; Laws 2015, LB361, § 20.
Effective date August 30, 2015.

16-630 Curbing and guttering bonds; interest rate; special assessments; how levied.

If curbing, or curbing and guttering, is done upon any street, avenue, or alley in any paving, repaving, graveling, or macadamizing district in which paving or other such improvement has been ordered, and the mayor and council shall deem it expedient to do so, the mayor and council may, for the purpose of paying the cost of such curbing, or curbing and guttering, to cause to be issued bonds of the city, to be called Curbing and Guttering Bonds of Paving District No., payable in not exceeding ten years from date, bearing interest, payable annually or semiannually, with interest coupons attached. In all cases the mayor and council shall assess at one time as a special assessment the total cost of such curbing, or curbing and guttering, upon the property abutting or adjacent to the portion of the street, avenue, or alley so improved, according to the special benefits. Such special assessments shall become delinquent the same as the special assessments for paving, repaving, graveling, or macadamizing purposes, draw the same rate of interest, be subject to the same penalties, and may be paid in the same manner, as special assessments for such purpose. The special assessment shall constitute a sinking fund for the payment of such bonds and interest, and the bonds shall not be sold for less than their par value.

Source: Laws 1901, c. 18, § 48, LV, p. 267; Laws 1901, c. 19, § 4, p. 315; Laws 1907, c. 13, § 1, p. 119; R.S.1913, § 4925; Laws 1915, c. 87, § 1, p. 226; C.S.1922, § 4093; Laws 1925, c. 50, § 7, p. 196; C.S.1929, § 16-622; R.S.1943, § 16-630; Laws 1945, c. 21, § 1, p. 128; Laws 1969, c. 51, § 29, p. 290; Laws 2015, LB361, § 21.
Effective date August 30, 2015.

16-631 Curbing and guttering; cost; paving bonds may include; special assessment.

If an improvement district has been established, an improvement thereon constructed, and curbing, or curbing and guttering, is therewith constructed and it becomes necessary to issue and sell street improvement bonds to pay for the cost of construction of the improvement and the curbing, or curbing and guttering, the mayor and city council may, at their discretion, if they deem it advisable, include the cost of curbing, or curbing and guttering, with the cost of the other improvement in the paving or other improvement district, and issue bonds for the combined cost of the improvement and curbing, or curbing and guttering, in any of the districts, naming the bonds Street Improvement Bonds of District No. The amount of money necessary for the payment of such

bonds shall be levied upon and collected from abutting and adjacent property and property specially benefited as a special assessment.

Source: Laws 1915, c. 87, § 1, p. 227; C.S.1922, § 4093; Laws 1925, c. 50, § 7, p. 197; C.S.1929, § 16-622; R.S.1943, § 16-631; Laws 1967, c. 67, § 11, p. 224; Laws 2015, LB361, § 22.
Effective date August 30, 2015.

16-652 Grading; special assessments; when delinquent.

The cost of grading the streets and alleys within any grading district shall be assessed upon the lots and lands specially benefited thereby in such district in proportion to such benefits, to be determined by the mayor and city council under section 16-615, as a special assessment. The special assessment for grading purposes shall be levied at one time and shall become delinquent as follows: One-fifth of the total amount shall become delinquent in fifty days after such levy; one-fifth in one year; one-fifth in two years; one-fifth in three years; and one-fifth in four years. Each of the installments, except the first, shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon, as in the case of other special assessments. The cost of grading the intersections of streets and spaces opposite alleys in any such district shall be paid by the city out of the general fund of such city.

Source: Laws 1901, c. 18, § 73, p. 286; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-652; Laws 1980, LB 933, § 11; Laws 1981, LB 167, § 12; Laws 2015, LB361, § 23.
Effective date August 30, 2015.

(d) SIDEWALKS

16-664 Construction; cost; special assessment; levy; when delinquent; payment.

The mayor and city council may provide for the laying of permanent sidewalks. Upon the petition of any freeholder who desires to build such a permanent sidewalk, the mayor and council may order the sidewalk to be built, the cost of the sidewalk until paid shall be a perpetual lien upon the real estate along which the freeholder desires such sidewalk to be constructed, and the city council may assess and levy the costs of the sidewalk against such real estate as a special assessment. The total cost of the building of the permanent sidewalk shall be levied at one time upon the property along which such permanent sidewalk is to be built, and become delinquent as follows: One-seventh of the total cost shall become delinquent in ten days after such levy; one-seventh in one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; and one-seventh in six years. Each of such installments, except the first, shall draw interest at a rate of not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy, until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be

adjusted by the Legislature, shall be paid thereon as in the case of other special assessments. The council shall pay for the building of such permanent sidewalk out of the general fund. The mayor and council may pass an ordinance to carry into effect this section.

Source: Laws 1901, c. 18, § 121, p. 303; R.S.1913, § 4948; C.S.1922, § 4117; C.S.1929, § 16-646; R.S.1943, § 16-664; Laws 1963, c. 65, § 1, p. 264; Laws 1965, c. 57, § 1, p. 264; Laws 1980, LB 933, § 12; Laws 1981, LB 167, § 13; Laws 2015, LB361, § 24. Effective date August 30, 2015.

(e) WATER AND SEWER DISTRICTS

16-669 Special assessments; when delinquent; interest; future installments; collection.

(1) Except as provided in subsection (2) of this section, special assessments for sewer or water improvements in a district shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 16-670. The first installment becomes delinquent fifty days after the making of such levy. Each installment, except the first, shall draw interest from the time of such levy until such installment becomes delinquent. After an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until such installment is collected and paid. Such special assessments shall be collected and enforced as in cases of other special assessments and shall be a lien on such real estate from and after the date of the levy thereof. If three or more installments are delinquent and unpaid on the same property, the city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the names of its record title owners and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper of general circulation published in the city and after the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments.

(2) If the city incurs no new indebtedness pursuant to section 16-670 for sewer or water improvements in a district, special assessments for sewer or water improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council determines at the time of making the levy to be reasonable and fair.

Source: Laws 1901, c. 18, § 48, XXVII, p. 252; Laws 1905, c. 24, § 1, p. 248; Laws 1911, c. 14, § 1, p. 130; Laws 1913, c. 161, § 1, p. 501; R.S.1913, § 4951; C.S.1922, § 4120; C.S.1929, § 16-649; Laws 1933, c. 136, § 19, p. 528; C.S.Supp.,1941, § 16-649; R.S.1943, § 16-669; Laws 1953, c. 29, § 1, p. 116; Laws 1955, c. 33, § 1, p. 140; Laws 1959, c. 64, § 2, p. 286; Laws 1969, c. 51, § 31, p. 291; Laws 1977, LB 483, § 4; Laws 1980, LB 933, § 14; Laws 1981, LB 167, § 15; Laws 2005, LB 161, § 4; Laws 2015, LB361, § 25. Effective date August 30, 2015.

16-672 Special assessments; equalization; reassessment.

Special assessments may be levied by the mayor and city council for the purpose of paying the cost of constructing sewers or drains within the city. Such assessment shall be levied on the real estate lying and being within the sewerage district in which such sewers or drains may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the council sitting as a board of equalization, after notice to property owners is provided as in other cases of special assessment. If the council, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be according to the front foot of the lots or real estate within such sewerage district, according to such other rule as the council sitting as such board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement. All assessments made for sewerage or drainage purposes shall be collected as special assessments and shall be subject to the same penalty as other special assessments. If sewers are constructed and any assessments to cover the costs thereof shall be declared void, or doubts exist as to the validity of such assessment, the mayor and council, for the purpose of paying the cost of such improvement, may make a reassessment of such costs on lots and real estate lying and being within the sewerage district in which such sewer may be situated, to the extent of the benefits to such property by reason of such improvement. Such reassessment shall be made substantially in the manner provided for making original special assessments as provided in this section. Any sums which may have been paid toward such improvement upon any lots or real estate included in such assessment shall be applied under the direction of the council to the credit of the persons and property on account of which the sums were paid. If the credits exceed the sum reassessed against such persons and property, the council shall cause such excess, with lawful interest, to be refunded to the party who made payment thereof. The sums so reassessed and not paid under a prior special assessment shall be collected and enforced in the same manner and be subject to the same penalty as other special assessments.

Source: Laws 1901, c. 18, § 67, p. 279; R.S.1913, § 4953; C.S.1922, § 4122; C.S.1929, § 16-651; R.S.1943, § 16-672; Laws 2015, LB361, § 26.

Effective date August 30, 2015.

ARTICLE 7**FISCAL MANAGEMENT, REVENUE, AND FINANCES**

Section

16-708. Special assessments; invalidity; reassessment.

16-708 Special assessments; invalidity; reassessment.

Whenever any special assessment upon any lot or lots or lands or parcels of land in a city of the first class is found to be invalid and uncollectible, shall be adjudged to be void by a court of competent jurisdiction, or is paid under protest and recovered by suit, because of any defect, irregularity, or invalidity in any of the proceedings or on account of the failure to observe and comply with any of the conditions, prerequisites, and requirements of any statute or ordinance, the mayor and city council may relevy the special assessment upon

the lot or lots or lands or parcels of land in the same manner as other special assessments are levied, without regard to whether the formalities, prerequisites, or conditions prior to equalization have been had or not.

Source: Laws 1925, c. 47, § 1, p. 187; C.S.1929, § 16-707; R.S.1943, § 16-708; Laws 2015, LB361, § 27.
Effective date August 30, 2015.

**ARTICLE 10
RETIREMENT SYSTEMS**

(a) POLICE OFFICERS RETIREMENT ACT

Section

16-1019. Exemption from legal process; administration; requirements; retirement committee; powers and duties; review of adjustment; tax levy authorized.

(b) FIREFIGHTERS RETIREMENT

16-1038. Retirement benefits; exemption from legal process; exception; tax-qualification requirements; benefit error; correction; appeal; tax levy authorized.

(a) POLICE OFFICERS RETIREMENT ACT

16-1019 Exemption from legal process; administration; requirements; retirement committee; powers and duties; review of adjustment; tax levy authorized.

(1) The right to any benefits under the retirement system and the assets of any fund of the retirement system shall not be assignable or subject to execution, garnishment, attachment, or the operation of any bankruptcy or insolvency laws, except that the retirement system may comply with the directions set forth in a qualified domestic relations order meeting the requirements of section 414(p) of the Internal Revenue Code. The city or retirement committee may require appropriate releases from any person as a condition to complying with any such order. The retirement system shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the retirement system, increases benefits not otherwise provided by the retirement system, or accelerates or defers the time of payment of benefits. No participant or beneficiary shall have any right to any specific portion of the assets of the retirement system.

(2) The retirement system shall be administered in a manner necessary to comply with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, including section 401(a)(9) relating to the time and manner in which benefits are required to be distributed and section 401(a)(9)(G) relating to incidental death benefit requirements, section 401(a)(16) relating to compliance with the maximum limitation on the plan benefits or contributions under section 415, section 401(a)(17) which limits the amount of compensation which can be taken into account under a retirement plan, section 401(a)(25) relating to the specification of actuarial assumptions, section 401(a)(31) relating to direct rollover distributions from eligible retirement plans, and section 401(a)(37) relating to the death benefit of a police officer who dies while performing qualified military service. Any requirements for compliance with section 401(a) of the Internal Revenue Code may be set forth in any trust or funding medium for the retirement system. This subsection shall be in full force and effect only so long as

conformity with section 401(a) of the Internal Revenue Code is required for public retirement systems in order to secure the favorable income tax treatment extended to sponsors and beneficiaries of tax-qualified retirement plans.

(3) If the retirement committee determines that the retirement system has previously overpaid or underpaid a benefit payable under the Police Officers Retirement Act, it shall have the power to correct such error. In the event of an overpayment, the retirement system may, in addition to any other remedy that the retirement system may possess, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon.

(4) A police officer whose benefit payment is adjusted by the retirement committee pursuant to subsection (3) of this section may request a review by the city council of the adjustment made by the retirement committee.

(5) In order to provide the necessary amounts to pay for or fund a pension plan established under the act, the mayor and council may make a levy which is within the levy restrictions of section 77-3442.

Source: Laws 1983, LB 237, § 19; Laws 1992, LB 672, § 20; Laws 1995, LB 574, § 20; Laws 1996, LB 1114, § 29; Laws 2012, LB916, § 2; Laws 2012, LB1082, § 15; Laws 2015, LB40, § 2.
Effective date August 30, 2015.

(b) FIREFIGHTERS RETIREMENT

16-1038 Retirement benefits; exemption from legal process; exception; tax-qualification requirements; benefit error; correction; appeal; tax levy authorized.

(1) The right to any benefits under the retirement system and the assets of any fund of the retirement system shall not be assignable or subject to execution, garnishment, attachment, or the operation of any bankruptcy or insolvency laws, except that the retirement system may comply with the directions set forth in a qualified domestic relations order meeting the requirements of section 414(p) of the Internal Revenue Code. The city or retirement committee may require appropriate releases from any person as a condition to complying with any such order. The retirement system shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the retirement system, increases benefits not otherwise provided by the retirement system, or accelerates or defers the time of payment of benefits. No participant or beneficiary shall have any right to any specific portion of the assets of the retirement system.

(2) The retirement system shall be administered in a manner necessary to comply with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, including section 401(a)(9) relating to the time and manner in which benefits are required to be distributed and section 401(a)(9)(G) relating to incidental death benefit requirements, section 401(a)(16) relating to compliance with the maximum limitation on the plan benefits or contributions under section 415, section 401(a)(17) which limits the amount of compensation which can be taken into account under a retirement plan, section 401(a)(25) relating to the specification of actuarial assumptions, section 401(a)(31) relating to direct rollover distribution from eligible retirement plans, and section 401(a)(37) relating to the death benefit of a firefighter who dies while performing qualified military service. Any

requirements for compliance with section 401(a) of the Internal Revenue Code may be set forth in any trust or funding medium for the retirement system. This subsection shall be in full force and effect only so long as conformity with section 401(a) of the Internal Revenue Code is required for public retirement systems in order to secure the favorable income tax treatment extended to sponsors and beneficiaries of tax-qualified retirement plans.

(3) If the retirement committee determines that the retirement system has previously overpaid or underpaid a benefit payable under sections 16-1020 to 16-1042, it shall have the power to correct such error. In the event of an overpayment, the retirement system may, in addition to any other remedy that the retirement system may possess, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon.

(4) A firefighter whose benefit payment is adjusted by the retirement committee pursuant to subsection (3) of this section may request a review by the city council of the adjustment made by the retirement committee.

(5) In order to provide the necessary amounts to pay for or fund a pension plan established under sections 16-1020 to 16-1042, the mayor and council may make a levy which is within the levy restrictions of section 77-3442.

Source: Laws 1983, LB 531, § 19; Laws 1993, LB 724, § 13; Laws 1995, LB 574, § 24; Laws 1996, LB 1114, § 30; Laws 2012, LB916, § 3; Laws 2012, LB1082, § 16; Laws 2015, LB40, § 3.
Effective date August 30, 2015.

CHAPTER 17

CITIES OF THE SECOND CLASS AND VILLAGES

Article.

1. Laws Applicable Only to Cities of the Second Class. 17-123 to 17-149.01.
2. Laws Applicable Only to Villages. 17-207.
5. General Grant of Power. 17-510 to 17-563.
9. Particular Municipal Enterprises.
 - (b) Sewerage System. 17-913, 17-921.
 - (c) Cemeteries. 17-941, 17-945.
 - (i) Water Service District. 17-971, 17-972.

ARTICLE 1

LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section

- 17-123. Public health; regulations; water; power to supply.
 17-123.01. Litter; removal; notice; action by city or village.
 17-149.01. Sewerage and drainage; failure of property owner to connect; notice; cost; special assessment; collection.

17-123 Public health; regulations; water; power to supply.

A city of the second class shall have power to make regulations to secure the general health of the city, to prevent and remove nuisances within the city and within its one-mile zoning jurisdiction, and to provide the city with water.

Source: Laws 1879, § 39, IV, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5017; C.S.1922, § 4186; C.S.1929, § 17-125; R.S. 1943, § 17-123; Laws 2015, LB266, § 8.
 Effective date August 30, 2015.

17-123.01 Litter; removal; notice; action by city or village.

Each city of the second-class and village may, by ordinance, prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village or within its one-mile zoning jurisdiction and require the removal thereof so as to abate any nuisance occasioned thereby. If the owner fails to remove such litter, after five days' notice by publication and by certified mail, the city or village, through its proper officers, shall remove the litter or cause it to be removed and shall assess the cost thereof against the property so benefited as provided by ordinance.

Source: Laws 1975, LB 117, § 2; Laws 2015, LB266, § 9.
 Effective date August 30, 2015.

17-149.01 Sewerage and drainage; failure of property owner to connect; notice; cost; special assessment; collection.

If any property owner neglects or fails within a period of ten days after notice has been given to him or her by certified or registered mail or by publication in some newspaper published or of general circulation in such city or village to

make connection with the sewerage system as provided in section 17-149, the governing body of such city or village may cause the connection to be done, assess the cost thereof against the property as a special assessment, and collect the special assessment in the manner provided for collection of other special assessments.

Source: Laws 1949, c. 22, § 1(2), p. 94; Laws 1987, LB 93, § 4; Laws 2015, LB361, § 28.
Effective date August 30, 2015.

ARTICLE 2

LAWS APPLICABLE ONLY TO VILLAGES

Section

17-207. Board of trustees; powers; restrictions.

17-207 Board of trustees; powers; restrictions.

The board of trustees shall have power to pass ordinances to prevent and remove nuisances within the village or within its one-mile zoning jurisdiction; to restrain and prohibit gambling; to provide for licensing and regulating theatrical and other amusements within the village; to prevent the introduction and spread of contagious diseases; to establish and regulate markets; to erect and repair bridges; to erect, repair, and regulate wharves and the rates of wharfage; to regulate the landing of watercraft; to provide for the inspection of building materials to be used or offered for sale in the village; to govern the planting and protection of shade trees in the streets and the building of structures projecting upon or over and adjoining, and all excavations through and under, the sidewalks of the village; and in addition to the special powers herein conferred and granted, to maintain the peace, good government, and welfare of the village and its trade, commerce, and manufactories, and to enforce all ordinances by inflicting penalties upon inhabitants or other persons, for the violation thereof, not exceeding five hundred dollars for any one offense, recoverable with costs. Nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1879, § 46, p. 203; Laws 1907, c. 15, § 1, p. 123; R.S.1913, § 5057; C.S.1922, § 4229; C.S.1929, § 17-207; R.S.1943, § 17-207; Laws 1986, LB 1027, § 190; Laws 1991, LB 849, § 63; Laws 1993, LB 138, § 65; Laws 1999, LB 128, § 1; Laws 2015, LB266, § 10.
Effective date August 30, 2015.

Cross References

Nebraska Bingo Act, see section 9-201.

Nebraska Lottery and Raffle Act, see section 9-401.

Nebraska Pickle Card Lottery Act, see section 9-301.

Nebraska Small Lottery and Raffle Act, see section 9-501.

State Lottery Act, see section 9-801.

ARTICLE 5

GENERAL GRANT OF POWER

| | |
|------------|---|
| Section | |
| 17-510. | Streets; improvement district; creation by petition; denial; special assessments. |
| 17-511. | Streets; improvement by ordinance; objections; time of filing; special assessment. |
| 17-512. | Streets; main thoroughfares; improvement by ordinance; assessments. |
| 17-539. | Waterworks; construction; cost; special assessments. |
| 17-555. | Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment. |
| 17-557.01. | Sidewalks; removal of encroachments; cost of removal; special assessments; interest. |
| 17-563. | Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; special assessment; violation; penalty; civil action. |

17-510 Streets; improvement district; creation by petition; denial; special assessments.

If a petition is signed by the owners of the record title representing more than sixty percent of the front footage of the property directly abutting upon the streets, alleys, public ways, or public grounds proposed to be improved and presented and filed with the city clerk or village clerk, petitioning therefor, the governing body shall by ordinance create a paving, graveling, or other improvement district, cause such work to be done or such improvement to be made, contract therefor, and levy special assessments on the lots and parcels of land abutting on or adjacent to such streets or alleys specially benefited thereby in such district in proportion to such benefits, except as provided in sections 19-2428 to 19-2431, to pay the cost of such improvement. The governing body may deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the governing body denies a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties.

Source: Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1887, c. 12, § 1, IV, p. 292; Laws 1903, c. 20, § 1, p. 248; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 177; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 529; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-510; Laws 1979, LB 176, § 1; Laws 1983, LB 125, § 2; Laws 1983, LB 94, § 3; Laws 2015, LB361, § 29.

Effective date August 30, 2015.

17-511 Streets; improvement by ordinance; objections; time of filing; special assessment.

Whenever the governing body deems it necessary to make the improvements in section 17-509 which are to be funded by a levy of special assessment on the property specially benefited, such governing body shall by ordinance create a paving, graveling, or other improvement district and, after the passage, approval, and publication of such ordinance, shall publish notice of the creation of any

such district for six days in a legal newspaper of the city or village if it is a daily newspaper or for two consecutive weeks if it is a weekly newspaper. If no legal newspaper is published in the city or village, the publication shall be in a legal newspaper of general circulation in the city or village. If the owners of the record title representing more than fifty percent of the front footage of the property directly abutting on the street or alley to be improved file with the city clerk or the village clerk within twenty days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the governing body shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy special assessments on the lots and parcels of land abutting on or adjacent to such street or alley specially benefited in such district in proportion to such benefits to pay the cost of such improvement.

Source: Laws 1927, c. 42, § 1, p. 177; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-511; Laws 1979, LB 176, § 2; Laws 1986, LB 960, § 8; Laws 1995, LB 196, § 3; Laws 2015, LB361, § 30.
Effective date August 30, 2015.

17-512 Streets; main thoroughfares; improvement by ordinance; assessments.

The council or board of trustees may, by a three-fourths vote of all members of such council or board of trustees, enact an ordinance creating a paving, graveling, or other improvement district, order such work to be done without petition upon any federal or state highways in the city or village or upon a street or route, designated by the mayor and council or board of trustees as a main thoroughfare, that connects to either a federal or state highway or a county road, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley specially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement.

Source: Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1903, c. 20, § 1, p. 248; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-512; Laws 1972, LB 1320, § 1; Laws 2015, LB361, § 31.
Effective date August 30, 2015.

17-539 Waterworks; construction; cost; special assessments.

The expense of erecting, locating, and constructing reservoirs and hydrants for the purpose of fire protection and the expense of constructing and laying water mains, pipes, or such parts thereof as may be just and lawful, may be assessed upon and collected from the property and real estate specially benefited thereby, if any, as a special assessment in such manner as may be provided

for the making of special assessments for other public improvements in such cities and villages.

Source: Laws 1881, c. 23, § 8, XV, p. 179; Laws 1885, c. 20, § 1, XV, p. 170; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 153; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-539; Laws 2015, LB361, § 32.

Effective date August 30, 2015.

17-555 Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.

(1) Cities of the second class or villages may remove all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the person placing them there or at the expense of the city or village and require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of such trees.

(2) Cities of the second class or villages may by ordinance declare it to be a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits or within its one-mile zoning jurisdiction of the city or village. Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within thirty days after the receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done and may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment.

(3) Cities or villages may regulate the building of bulkheads, cellar and basement ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the city or village.

Source: Laws 1879, § 69, XXIV, p. 215; Laws 1881, c. 23, § 8, XXIV, p. 183; Laws 1885, c. 20, § 1, XXIV, p. 174; Laws 1887, c. 12, § 1, XXIV, p. 303; R.S.1913, § 5129; C.S.1922, § 4304; C.S.1929, § 17-453; R.S.1943, § 17-555; Laws 1994, LB 695, § 6; Laws 2015, LB266, § 11; Laws 2015, LB361, § 33.

Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB266, section 11, with LB361, section 33, to reflect all amendments.

17-557.01 Sidewalks; removal of encroachments; cost of removal; special assessments; interest.

If the abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks, as provided in section 17-557, the city or village through the proper officers may cause such encroachments to be removed and the cost of removal shall be paid out of the street fund. The city council or board of trustees shall assess the cost of the notice and removal of the encroachment against such abutting property as a special assessment. Such special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as a special assessment in addition to the general revenue taxes and shall be subject to the same penalties as other special assessments and shall draw interest from the date of the assessment. Upon payment of the assessment, the assessment shall be credited to the street fund.

Source: Laws 1947, c. 37, § 2, p. 149; Laws 1969, c. 51, § 48, p. 302; Laws 2015, LB361, § 34.
Effective date August 30, 2015.

17-563 Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; special assessment; violation; penalty; civil action.

(1) A city of the second class and village by ordinance (a) may require lots or pieces of ground within the city or village or within its one-mile zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon, (b) may require the owner or occupant of any lot or piece of ground within the city or village or within its one-mile zoning jurisdiction to keep the lot or piece of ground and the adjoining streets and alleys free of excessive growth of weeds, grasses, or worthless vegetation, and (c) may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village or within its one-mile zoning jurisdiction.

(2) Any city of the second class and village may by ordinance declare it to be a nuisance to permit or maintain excessive growth of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles. The city or village shall establish by ordinance the height at which weeds, grasses, or worthless vegetation are a nuisance.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city or village shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city or village to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city or village clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city or village may have such work done. Within

five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or village or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city or village may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment in the same manner as other special assessments for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

(b) Weeds includes, but is not limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus sp.*) (toun), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).

Source: Laws 1879, § 71, p. 219; R.S.1913, § 5137; C.S.1922, § 4312; C.S.1929, § 17-503; R.S.1943, § 17-563; Laws 1991, LB 330, § 2; Laws 1995, LB 42, § 3; Laws 2004, LB 997, § 2; Laws 2009, LB495, § 8; Laws 2013, LB643, § 2; Laws 2015, LB266, § 12; Laws 2015, LB361, § 35.
Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB266, section 12, with LB361, section 35, to reflect all amendments.

ARTICLE 9

PARTICULAR MUNICIPAL ENTERPRISES

(b) SEWERAGE SYSTEM

Section

17-913. Sewers; resolution to construct, purchase, or acquire; contents; estimate of cost; special assessment.

17-921. Sewers; special assessments; levy; collection.

(c) CEMETERIES

17-941. Cemetery; lots; conveyance.

17-945. Cemetery association; trustees; conveyances.

(i) WATER SERVICE DISTRICT

17-971. Water service districts; improvements; protest; effect; special assessments.

17-972. Water service districts; failure to comply with regulation or make connection; effect; special assessment.

(b) SEWERAGE SYSTEM

17-913 Sewers; resolution to construct, purchase, or acquire; contents; estimate of cost; special assessment.

When the city council of any city of the second class, or the board of trustees of any village, deems it advisable or necessary to build, reconstruct, purchase, or otherwise acquire a sanitary sewer system or a sanitary or storm water sewer, or sewers or sewage disposal plant, or pumping stations or sewer outlets for any such city or village, constructed or to be constructed in whole or in part inside or outside thereof, it shall declare the advisability and necessity therefor in a proposed resolution, which, in the case of pipe sewer construction, shall state the kinds of pipe proposed to be used, and shall state the size or sizes and kinds of sewers proposed to be constructed and shall designate the location and terminal points thereof. If it is proposed to construct disposal plants, pumping stations, or outlet sewers, the resolution shall refer to the plans and specifications thereof which shall have been made and filed before the publication of such resolution by the city engineer of any such city or by the engineer who has been employed by any such city or village for such purpose. If it is proposed to purchase or otherwise acquire a sanitary sewer system or a sanitary or storm water sewer, or sewers or sewage disposal plant, or pumping stations or sewer outlets, the resolution shall state the price and conditions of the purchase or how the system, sewer, plant, station, or outlet is being acquired. Such engineer shall also make and file, prior to the publication of such resolution, an estimate of the total cost of the proposed improvement. The proposed resolution shall state the amount of such estimated cost. The city council or board of trustees may assess, to the extent of special benefits, the cost of such portions of the improvements as are local improvements, upon properties found specially benefited thereby as a special assessment. The resolution shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1919, c. 189, § 1, p. 427; Laws 1921, c. 281, § 1, p. 926; C.S.1922, § 4337; Laws 1923, c. 143, § 1, p. 355; C.S.1929, § 17-528; R.S.1943, § 17-913; Laws 1947, c. 39, § 1, p. 151; Laws 2015, LB361, § 36.
Effective date August 30, 2015.

17-921 Sewers; special assessments; levy; collection.

After the equalization of special assessments as required by section 17-920, the special assessments shall be levied by the mayor and city council or the board of village trustees, upon all lots or parcels of ground within the district specified which are benefited by reason of the improvement. The special assessments may be relieved if, for any reason, the levy thereof is void or not enforceable and in an amount not exceeding the previous levy. Such levy shall be enforced as a special assessment, and any payments thereof under previous levies shall be credited to the person or property making the same. All special assessments made for such purposes shall be collected in the same manner as other special assessments.

Source: Laws 1919, c. 189, § 9, p. 430; C.S.1922, § 4345; C.S.1929, § 17-536; R.S.1943, § 17-921; Laws 2015, LB361, § 37.
Effective date August 30, 2015.

(c) CEMETERIES

17-941 Cemetery; lots; conveyance.

The mayor and council or board of trustees may convey cemetery lots by certificate signed by the mayor and chairperson, and countersigned by the clerk, under the seal of the city or village, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulation of the city council or board of trustees.

Source: Laws 1879, § 69, XXXIV, p. 218; Laws 1881, c. 23, § 8, XXXIV, p. 186; Laws 1885, c. 20, § 1, XXXIV, p. 177; Laws 1887, c. 12, § 1, XXXIV, p. 306; R.S.1913, § 5168; C.S.1922, § 4355; C.S.1929, § 17-553; R.S.1943, § 17-941; Laws 1971, LB 32, § 4; Laws 2015, LB241, § 3.

Effective date August 30, 2015.

17-945 Cemetery association; trustees; conveyances.

Upon the formation of such cemetery association, the lot owners in such cemetery shall elect five of their number as trustees, to whom shall be given the general care, management, and supervision of such cemetery. The mayor or chairperson of such city or village shall, by virtue of his or her office, be a member of the board of trustees, and it shall be his or her duty to make, execute, and deliver to purchasers of lots deeds therefor, when requested by such board of trustees. Such deed shall be executed under the corporate seal of such city, and countersigned by the clerk, specifying that the person to whom the same is issued is the owner, for the purposes of interment, of the lot or lots described therein by numbers, as laid down on the map or plat of such cemetery. Such deed shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulations of the board of trustees.

Source: Laws 1887, c. 15, § 2, p. 330; R.S.1913, § 5172; C.S.1922, § 4359; C.S.1929, § 17-557; R.S.1943, § 17-945; Laws 2015, LB241, § 4.

Effective date August 30, 2015.

(i) WATER SERVICE DISTRICT

17-971 Water service districts; improvements; protest; effect; special assessments.

If a governing body deems it necessary or desirable to make improvements in a water service district, it shall by ordinance create such water service district and, after the passage, approval, and publication of such ordinance, shall publish notice of the creation of such district for two consecutive weeks in a legal newspaper of the city or village. If no legal newspaper is published in the city or village, the notice shall be placed in a legal newspaper of general circulation in the city or village. If a majority of the resident owners of the property directly abutting upon any water main to be constructed within such water service district shall file with the city clerk or the village clerk within

twenty days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If such objections are not so filed against the district, the governing body shall immediately cause such work to be done or such improvement to be made, shall contract therefor, and shall levy special assessments on the lots and parcels of land within such district or districts specially benefited in proportion to such benefits in order to pay the cost of such improvement.

Source: Laws 1967, c. 73, § 2, p. 237; Laws 1986, LB 960, § 10; Laws 2015, LB361, § 38.
Effective date August 30, 2015.

17-972 Water service districts; failure to comply with regulation or make connection; effect; special assessment.

If any property owner shall neglect or fail, for ten days after notice either by personal service or by publication in a legal newspaper in the manner prescribed in section 17-971, to comply with the regulations adopted pursuant to section 17-970 or to make any required connections, the governing body may cause the compliance or connections to be done and assess the cost against the property as a special assessment and collect the special assessment in the manner provided for other special assessments.

Source: Laws 1967, c. 73, § 3, p. 238; Laws 1986, LB 960, § 11; Laws 2015, LB361, § 39.
Effective date August 30, 2015.

CHAPTER 18

CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.

- 2. Direct Borrowing from Financial Institution. 18-201.
- 4. Public Utilities. 18-406.
- 17. Miscellaneous. 18-1719, 18-1751.
- 27. Municipal Economic Development. 18-2705, 18-2709.
- 31. Municipal Custodianship for Dissolved Homeowners Associations Act. 18-3101 to 18-3105.

ARTICLE 2

DIRECT BORROWING FROM FINANCIAL INSTITUTION

Section

18-201. Direct borrowing; purposes; ordinance or resolution; public notice; limitation.

18-201 Direct borrowing; purposes; ordinance or resolution; public notice; limitation.

(1) The mayor and the council of any city or board of trustees of any village, in addition to other powers granted by law, may by ordinance or resolution provide for direct borrowing from a financial institution for the purposes outlined in this section. Loans made under this section shall not be restricted to a single year and may be repaid in installment payments.

(2) The mayor and the council of any city or board of trustees of any village may borrow directly from a financial institution for the purchase of real or personal property, construction of improvements, or refinancing of existing indebtedness upon a certification in the ordinance or resolution authorizing the direct borrowing that:

(a) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through traditional bond financing would be impractical;

(b) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through traditional bond financing could not be completed within the time restraints facing the city or village; or

(c) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through direct borrowing would generate taxpayer savings over traditional bond financing.

(3) Prior to approving direct borrowing under this section, the council or board of trustees shall include in any public notice required for meetings a clear notation that an ordinance or resolution authorizing direct borrowing from a financial institution will appear on the agenda.

(4) The total amount of indebtedness from direct borrowing under this section shall not exceed:

(a) For a city of the metropolitan class, city of the primary class, city of the first class, or city of the second class, ten percent of the municipal budget of the city; and

(b) For any village, twenty percent of the municipal budget of the village.

(5) Prior to approving direct borrowing under this section, a municipality shall consider, to the extent possible, proposals from multiple financial institutions.

(6) For purposes of this section, financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, or savings and loan association.

Source: Laws 2015, LB152, § 1.

Effective date August 30, 2015.

**ARTICLE 4
PUBLIC UTILITIES**

Section

18-406. Public utility districts; special assessments; when due; equalization; interest.

18-406 Public utility districts; special assessments; when due; equalization; interest.

The special assessment provided in section 18-405 shall be paid in ten installments. The first installment, or one-tenth of the assessment, shall become due and delinquent fifty days after the date of levy, and one-tenth of such assessment shall become due and delinquent each year thereafter, counting from the date of levy, for nine years. The special assessment shall bear interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, prior to delinquency, and at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, after delinquency. Prior to the levy of the special assessment as provided in section 18-405, such assessment shall be equalized in the same manner as provided by law for the equalization of special assessments levied in such cities, such villages, and the city of the metropolitan class within such metropolitan utilities district.

Source: Laws 1921, c. 110, § 5, p. 388; C.S.1922, § 4479; C.S.1929, § 18-1005; Laws 1941, c. 27, § 1, p. 129; C.S.Supp.,1941, § 18-1005; R.S.1943, § 18-406; Laws 1963, c. 80, § 1, p. 287; Laws 1980, LB 933, § 22; Laws 1981, LB 167, § 23; Laws 1983, LB 438, § 1; Laws 1992, LB 746, § 67; Laws 2015, LB361, § 40.
Effective date August 30, 2015.

**ARTICLE 17
MISCELLANEOUS**

Section

18-1719. Weeds; destruction and removal within right-of-way of railroads; powers; special assessment.

18-1751. Special improvement district; authorized; when; special assessment.

18-1719 Weeds; destruction and removal within right-of-way of railroads; powers; special assessment.

Any city or village may provide for the destruction and removal of specified portions of weeds and worthless vegetation within the right-of-way of all

railroads within the corporate limits of any such city or village, and it may require the owner or owners of such right-of-way to destroy and remove the weeds or vegetation therefrom. If such owner or owners fail, neglect, or refuse, after ten days' written notice to remove the weeds or vegetation, such city or village, by its proper officers, shall destroy and remove the weeds or vegetation or cause the weeds or vegetation to be destroyed or removed and shall assess the cost thereof against such property as a special assessment. No city or village shall destroy or remove or otherwise treat such specified portions until after the time has passed in which the railroad company is required to destroy or remove such vegetation.

Source: Laws 1969, c. 599, § 2, p. 2454; Laws 2015, LB361, § 41.
Effective date August 30, 2015.

18-1751 Special improvement district; authorized; when; special assessment.

All cities and villages may create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing street, alley, water line, sewer line, or any other such improvement. Except as provided in sections 19-2428 to 19-2431, the city council or board of trustees may levy a special assessment, to the extent of such special benefits, for the costs of such improvements upon the properties found specially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the city council or board of trustees shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law.

Source: Laws 1987, LB 721, § 1; Laws 2015, LB361, § 42.
Effective date August 30, 2015.

ARTICLE 27

MUNICIPAL ECONOMIC DEVELOPMENT

Section

18-2705. Economic development program, defined.

18-2709. Qualifying business, defined.

18-2705 Economic development program, defined.

(1) Economic development program means any project or program utilizing funds derived from local sources of revenue for the purpose of providing direct or indirect financial assistance to a qualifying business or the payment of related costs and expenses or both, without regard to whether that business is identified at the time the project or program is initiated or is to be determined by specified means at some time in the future.

(2) An economic development program may include, but shall not be limited to, the following activities: Direct loans or grants to qualifying businesses for fixed assets or working capital or both; loan guarantees for qualifying businesses; grants for public works improvements which are essential to the location or expansion of, or the provision of new services by, a qualifying business; grants or loans to qualifying businesses for job training; the purchase of real estate, options for such purchases, and the renewal or extension of such options; grants or loans to qualifying businesses to provide relocation incentives for new residents; the issuance of bonds as provided for in the Local Option Municipal Economic Development Act; and payments for salaries and support

of city staff to implement the economic development program or the contracting of such to an outside entity.

(3) For cities of the first and second class and villages, an economic development program may also include grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income.

(4) For cities of the first and second class and villages, an economic development program may also include grants, loans, or funds for rural infrastructure development as defined in section 66-2102.

(5) An economic development program may be conducted jointly by two or more cities after the approval of the program by the voters of each participating city.

Source: Laws 1991, LB 840, § 6; Laws 1993, LB 732, § 17; Laws 1995, LB 207, § 3; Laws 2001, LB 827, § 13; Laws 2012, LB1115, § 8; Laws 2013, LB295, § 1; Laws 2015, LB150, § 1.
Effective date August 30, 2015.

18-2709 Qualifying business, defined.

(1) Qualifying business means any corporation, partnership, limited liability company, or sole proprietorship which derives its principal source of income from any of the following: The manufacture of articles of commerce; the conduct of research and development; the processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities relating to eligible activities as listed in this section; telecommunications activities, including services providing advanced telecommunications capability; tourism-related activities; or the production of films, including feature, independent, and documentary films, commercials, and television programs.

(2) Qualifying business also means:

(a) In cities of the first and second class and villages, a business that derives its principal source of income from the construction or rehabilitation of housing;

(b) A business that derives its principal source of income from retail trade, except that no more than forty percent of the total revenue generated pursuant to the Local Option Municipal Economic Development Act for an economic development program in any twelve-month period and no more than twenty percent of the total revenue generated pursuant to the act for an economic development program in any five-year period, commencing from the date of municipal approval of an economic development program, shall be used by the city for or devoted to the use of retail trade businesses. For purposes of this subdivision, retail trade means a business which is principally engaged in the sale of goods or commodities to ultimate consumers for their own use or consumption and not for resale; and

(c) In cities with a population of two thousand five hundred inhabitants or less, a business shall be a qualifying business even though it derives its principal source of income from activities other than those set out in this section.

(3) If a business which would otherwise be a qualifying business employs people and carries on activities in more than one city in Nebraska or will do so

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at any time during the first year following its application for participation in an economic development program, it shall be a qualifying business only if, in each such city, it maintains employment for the first two years following the date on which such business begins operations in the city as a participant in its economic development program at a level not less than its average employment in such city over the twelve-month period preceding participation.

(4) A qualifying business need not be located within the territorial boundaries of the city from which it is or will be receiving financial assistance.

(5) Qualifying business does not include a political subdivision, a state agency, or any other governmental entity, except as allowed for cities of the first and second class and villages for rural infrastructure development as provided for in subsection (4) of section 18-2705.

Source: Laws 1991, LB 840, § 10; Laws 1993, LB 121, § 145; Laws 1993, LB 732, § 18; Laws 1994, LB 1188, § 1; Laws 1995, LB 207, § 4; Laws 2001, LB 827, § 14; Laws 2011, LB471, § 2; Laws 2012, LB863, § 2; Laws 2015, LB150, § 2.
Effective date August 30, 2015.

ARTICLE 31

MUNICIPAL CUSTODIANSHIP FOR DISSOLVED HOMEOWNERS ASSOCIATIONS ACT

Section

18-3101. Act, how cited.

18-3102. Terms, defined.

18-3103. Municipality; action to be appointed custodian.

18-3104. Appointment of municipality as custodian; findings; hearing; powers; compensation; costs; lien; recording; foreclosure; termination of custodianship; withdrawal or termination of custodianship.

18-3105. Dissolved homeowners association; reinstatement; procedure; fee; Secretary of State; duties; effect of reinstatement.

18-3101 Act, how cited.

Sections 18-3101 to 18-3105 shall be known and may be cited as the Municipal Custodianship for Dissolved Homeowners Associations Act.

Source: Laws 2015, LB304, § 1.

Effective date August 30, 2015.

18-3102 Terms, defined.

For purposes of the Municipal Custodianship for Dissolved Homeowners Associations Act, unless the context otherwise requires:

(1) Common area means lot or outlot within a plat or subdivision of real property including the improvements thereon owned or otherwise maintained, cared for, or administered by the homeowners association for the common use, benefit, and enjoyment of its members;

(2) Homeowners association means a nonprofit corporation duly incorporated under the laws of the State of Nebraska for the purpose of enforcing the restrictive covenants established upon the real property legally described in the articles of incorporation which is located within the corporate limits of a municipality, each member of which is an owner of a lot located within the plat or subdivision and, by virtue of membership or ownership of a lot, is obligated

to pay costs for the administration, maintenance, and care of the common area within the plat or subdivision. Homeowners association includes associations of residential homeowners, nonresidential property owners, or both;

(3) Lot means any designated parcel of land located within a plat or subdivision to be separately owned, used, developed, or built upon;

(4) Member means an owner that is qualified to be a member of a homeowners association by virtue of ownership of a lot covered by the property described in the declaration and articles of incorporation of a homeowners association dissolved under section 21-19,138;

(5) Municipality means any city or incorporated village of this state;

(6) Owner means the owner of a lot within the plat or subdivision, but does not include a person who has an interest in a lot solely as security for an obligation; and

(7) Real property means the real property described in the articles of incorporation which is located within or to be located within a plat or subdivision approved by a municipality and which is subject to restrictive covenants to be enforced by the homeowners association and filed of record in the office of the register of deeds of the county in which the real property is located.

Source: Laws 2015, LB304, § 2.

Effective date August 30, 2015.

18-3103 Municipality; action to be appointed custodian.

In the event a homeowners association is dissolved pursuant to section 21-19,138 and not reinstated pursuant to the Nebraska Nonprofit Corporation Act, any municipality may bring an action to be appointed as custodian to manage the affairs of the homeowners association as set forth in section 18-3104.

Source: Laws 2015, LB304, § 3.

Effective date August 30, 2015.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

18-3104 Appointment of municipality as custodian; findings; hearing; powers; compensation; costs; lien; recording; foreclosure; termination of custodianship; withdrawal or termination of custodianship.

(1) The district court of the county in which a dissolved homeowners association was previously existing shall, in a proceeding brought by a municipality by petition to the district court, appoint the municipality as custodian to manage the affairs of the homeowners association upon a finding that:

(a) The homeowners association has been administratively dissolved by the Secretary of State pursuant to section 21-19,138;

(b) The homeowners association has failed in one or more of the following ways:

(i) To maintain the common area as required by the municipality's conditions of approval for the plat or subdivision of real property;

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(ii) To maintain the common area or private improvements located outside of the common area on the real property in the plat or subdivision in accordance with all terms and conditions of any agreement with the municipality; or

(iii) To comply with any applicable laws, rules, or regulations pertaining to maintenance of the common area or private improvements located outside of the common area on the real property in the plat or subdivision such that the noncompliance is adverse to the interests of the municipality and may result in expenditures by the municipality not otherwise required;

(c) The municipality has made a demand on the members to hold a special meeting to remove and elect new directors and to approve a submission of an application to the Secretary of State for reinstatement pursuant to the Municipal Custodianship for Dissolved Homeowners Associations Act or the Nebraska Nonprofit Corporation Act; and

(d) The members have failed to reinstate the homeowners association within six months after the demand.

(2) The district court shall hold a hearing, after written notification thereof by the petitioner to all parties to the proceeding and any interested persons designated by the court, before appointing a custodian, and the petitioner shall provide sufficient proof of service to the court. Service by first-class mail shall be deemed sufficient service. The district court appointing the custodian shall have exclusive jurisdiction over the homeowners association and all of its property wherever located.

(3) The district court shall describe the powers and duties of the custodian in its appointing order, which order may be amended upon motion and notice to the parties from time to time. Among other powers, the appointing order shall provide that the custodian may exercise all of the powers of the homeowners association, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the association in the best interests of its members. The custodian shall not be liable for the actions or inactions of the homeowners association and shall maintain all immunities granted to municipalities by applicable law.

(4) Upon application of the custodian, the district court from time to time during the custodianship may order compensation paid and expense disbursements or reimbursements made to the custodian from the assets of the association or proceeds from the sale of the assets. Notice of a hearing to determine compensation and costs shall be provided to all owners and interested parties by the custodian as set forth in subsection (2) of this section, with proof of service provided by the custodian. In the event the district court awards compensation or reimbursement of costs, all such compensation and costs shall be a lien on each and all of the lots in the manner as set forth in subsection (5) of this section. Any court order awarding compensation or reimbursement of costs herein shall identify each lot and the amount of compensation or reimbursement of costs each lot shall be charged as a lien.

(5)(a) A lien created under subsection (4) of this section shall be effective from the time the district court awards the compensation or reimbursement of costs and a notice containing the dollar amount of the lien is recorded in the office where mortgages or deeds of trust are recorded. The lien may be foreclosed in like manner as a mortgage on real estate but the municipality shall give reasonable notice of its action to all other lienholders whose interest would be affected.

(b) A lien created under subsection (4) of this section is prior to all other liens and encumbrances on real estate except (i) liens and encumbrances recorded before the recordation of the declaration or agreement, (ii) a first mortgage or deed of trust on real estate recorded before the notice required under subdivision (5)(a) of this section has been recorded, and (iii) liens for real estate taxes.

(6) In the event the homeowners association is reinstated after appointment of a custodian, any interested party may make a request to the district court for termination of the custodianship.

(7) A custodian may be allowed to withdraw from or terminate the custodianship upon an order from the district court permitting such withdrawal or termination following a hearing for which notice is provided to all owners and interested parties by the custodian.

Source: Laws 2015, LB304, § 4.

Effective date August 30, 2015.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

18-3105 Dissolved homeowners association; reinstatement; procedure; fee; Secretary of State; duties; effect of reinstatement.

(1) Notwithstanding any provision to the contrary in the Nebraska Nonprofit Corporation Act or the articles of incorporation or bylaws of a homeowners association, a homeowners association dissolved pursuant to section 21-19,138 may, in addition to any other procedure allowed by law, apply to the Secretary of State for reinstatement in one or more of the following ways:

(a) An application for reinstatement may be brought at any time after dissolution by an officer or director of the dissolved homeowners association pursuant to section 21-19,139; or

(b) Three or more members of such homeowners association may, at any time after dissolution, call a special meeting to (i) remove and elect new directors and (ii) approve the submission of an application to the Secretary of State for reinstatement. Such members may set the time and place of the meeting. Notice of the meeting shall be given pursuant to section 21-1955. For purposes of this section only and notwithstanding the declaration, the articles of incorporation, or the bylaws of a dissolved homeowners association, action on matters described in this subsection shall be approved by the affirmative vote of the voters present and voting on the matter. Three members eligible to vote on the matter shall constitute a quorum.

(2) Upon action being taken to apply for reinstatement as set forth in subdivision (1)(a) or (b) of this section, the process for reinstatement set forth in section 21-19,139 shall apply, except that the reinstatement fee for a homeowners association dissolved more than five years shall be one hundred dollars. Nothing in this subsection shall be construed to abolish, modify, or otherwise change any restrictive covenant or other benefit or obligation of membership in a homeowners association.

(3) The application for reinstatement must:

(a) Recite the name of the homeowners association and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

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(c) State that the homeowners association's name satisfies the requirements of section 21-1931.

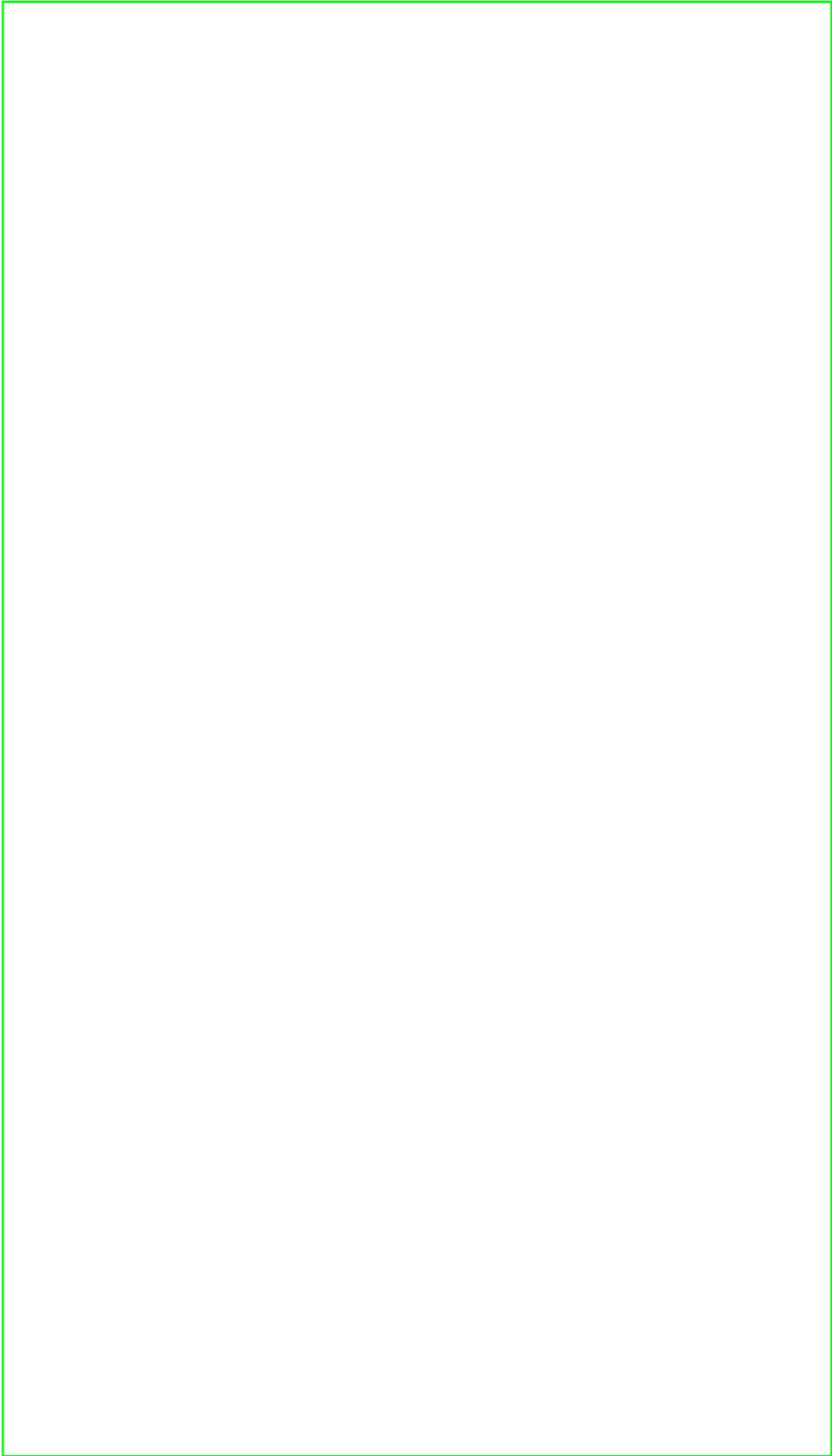
(4) If the Secretary of State determines that the application contains the information required by subdivisions (1)(a) and (b) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the homeowners association under section 21-1937.

(5) When reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the homeowners association shall resume carrying on its activities as if the administrative dissolution had never occurred.

Source: Laws 2015, LB304, § 5.
Effective date August 30, 2015.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.



CHAPTER 19
CITIES AND VILLAGES; LAWS APPLICABLE
TO MORE THAN ONE AND LESS THAN
ALL CLASSES

Article.

24. Municipal Improvements. (Applicable to cities of the first or second class and villages.) 19-2404 to 19-2427.
40. Business Improvement Districts. (Applicable to all cities.) 19-4015 to 19-4038.

ARTICLE 24

**MUNICIPAL IMPROVEMENTS. (APPLICABLE TO CITIES OF
THE FIRST OR SECOND CLASS AND VILLAGES.)**

Section

- 19-2404. Sanitary sewer extension mains; water extension mains; special assessments; maturity; interest; rate.
19-2407. Water service; sanitary sewer service; extension districts; special assessments; levy; collection.
19-2418. Sidewalks; construct, replace, repair; districts; special assessments; payment.
19-2427. Improvement district; adjacent land; how treated; special assessments.

19-2404 Sanitary sewer extension mains; water extension mains; special assessments; maturity; interest; rate.

(1) Except as provided in subsection (2) of this section, special assessments for sanitary sewer extension mains or water extension mains in a district shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 19-2405. The first installment becomes delinquent fifty days after the making of such levy. Subsequent installments become delinquent on the anniversary date of the levy. Each installment, except the first, shall draw interest at the rate set by the city council or board of trustees from the time of such levy until such installment becomes delinquent. After an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until such installment is collected and paid. Such special assessments shall be collected and enforced as in the case of general municipal taxes and shall be a lien on such real estate from and after the date of the levy. If three or more of such installments become delinquent and unpaid on the same property, the city council or the board of trustees may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the name of its record title owner and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time in a legal newspaper of general circulation published in the municipality or, if none is published in such municipality, in a legal newspaper of general circulation in the municipality. After the fixed date such future installments shall be deemed

to be delinquent and the municipality may proceed to enforce and collect the total amount due including all future installments.

(2) If the city or village incurs no new indebtedness pursuant to section 19-2405 for any water service extension or sanitary sewer extension in a district, the special assessments for such improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council or board of trustees determines at the time of making the levy to be reasonable and fair.

Source: Laws 1961, c. 63, § 3, p. 249; Laws 1969, c. 51, § 76, p. 322; Laws 1980, LB 655, § 1; Laws 1980, LB 933, § 23; Laws 1981, LB 167, § 24; Laws 1986, LB 960, § 16; Laws 2005, LB 161, § 9; Laws 2015, LB361, § 43.
Effective date August 30, 2015.

19-2407 Water service; sanitary sewer service; extension districts; special assessments; levy; collection.

Special assessments may be levied by the mayor and city council or chairperson and board of trustees, as the case may be, for the purpose of paying the cost of constructing extension water mains or sanitary service connections, as provided in sections 19-2402 to 19-2407. Such assessments shall be levied on the real property lying and being within the utility main district in which such extension mains may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the mayor and council, or chairperson and board of trustees, as the case may be, sitting as a board of equalization after notice to property owners, as provided in other cases of special assessment. After the mayor and council, or chairperson and board of trustees, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be made according to the front footage of the lots or real estate within such utility district, or according to such other rule as the board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement. All such special assessments shall be collected in the same manner as general municipal taxes and shall be subject to the same penalty.

Source: Laws 1961, c. 63, § 6, p. 250; Laws 2015, LB361, § 44.
Effective date August 30, 2015.

19-2418 Sidewalks; construct, replace, repair; districts; special assessments; payment.

The mayor and city council or board of trustees shall levy special assessments on the lots and parcels of land abutting on or adjacent to the sidewalk improvements specially benefited thereby in such district in proportion to the benefits, to pay the cost of such improvement. All special assessments shall be a lien on the property on which levied from the date of the levy until paid. The special assessment for the sidewalk improvement shall be levied at one time and shall become delinquent as follows: One-seventh of the total assessment shall become delinquent in ten days after such levy; one-seventh in one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; and one-seventh in six years. Each of such installments, except the first, shall draw interest at the rate of not exceeding the rate

of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon as in the case of other special assessments. All such special assessments shall be made and collected in accordance with the procedure established for paving assessments for the particular city or village.

Source: Laws 1965, c. 80, § 2, p. 316; Laws 1980, LB 933, § 24; Laws 1981, LB 167, § 25; Laws 2015, LB361, § 45.
Effective date August 30, 2015.

19-2427 Improvement district; adjacent land; how treated; special assessments.

Any city of the first or second class or village may include land adjacent to such city or village when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The city council or board of trustees may levy a special assessment for the costs of such improvements upon the properties found specially benefited thereby, except as provided in sections 19-2428 to 19-2431.

Source: Laws 1979, LB 136, § 4; Laws 1983, LB 94, § 4; Laws 1987, LB 679, § 1; Laws 2015, LB361, § 46.
Effective date August 30, 2015.

ARTICLE 40

BUSINESS IMPROVEMENT DISTRICTS. (APPLICABLE TO ALL CITIES.)

Section

- 19-4015. Act, how cited.
- 19-4016. Act, how construed.
- 19-4017. Act; purpose.
- 19-4017.01. Terms, defined.
- 19-4020. Business improvement district; created; location.
- 19-4021. Business improvement board; membership; powers; duties.
- 19-4024. Repealed. Laws 2015, LB 168, § 21.
- 19-4025. Transferred to section 19-4029.01.
- 19-4026. Hearing to create a district; call by petition.
- 19-4027. Hearing to create district; city council; duties; protest; effect.
- 19-4028. Proposed district; boundary amendment; hearing continued; procedure.
- 19-4029. City council; ordinance to establish district; when; contents; taxation; basis.
- 19-4029.01. Notice of hearing; manner given; contents.
- 19-4029.02. Expansion of boundaries; procedure; ordinance; hearing.
- 19-4029.03. Hearing for expansion of boundaries; call by petition.
- 19-4029.04. Hearing for expansion of boundaries; city council; duties; protest; effect.
- 19-4029.05. Expansion of boundaries; city council; ordinance; when; contents; taxation; basis.
- 19-4030. Business improvement district; special assessment; purpose; notice; appeal; lien.
- 19-4033. Assessments or taxes; limitations; effect.
- 19-4037. Funds and grants; use.
- 19-4038. Districts created prior to May 23, 1979; governed by act.

19-4015 Act, how cited.

Sections 19-4015 to 19-4038 shall be known and may be cited as the Business Improvement District Act.

Source: Laws 1979, LB 251, § 1; Laws 2015, LB168, § 1.
Effective date August 30, 2015.

19-4016 Act, how construed.

The Business Improvement District Act provides a separate and additional method, authority, and procedure for the matters to which it relates and does not affect any other law relating to the same or similar subject. When proceeding under the act, only the provisions of the act need be followed.

Source: Laws 1979, LB 251, § 2; Laws 2015, LB168, § 2.
Effective date August 30, 2015.

19-4017 Act; purpose.

Cities of the metropolitan, primary, first, and second class in the state at present have business areas in need of improvement and development, but lack the funds with which to provide and maintain such improvements. The purpose of the Business Improvement District Act is to provide a means by which such cities may raise the necessary funds to be used for the purpose of providing and maintaining the improvements authorized by the act.

Source: Laws 1979, LB 251, § 3; Laws 2015, LB168, § 3.
Effective date August 30, 2015.

19-4017.01 Terms, defined.

For purposes of the Business Improvement District Act:

(1) Record owner shall mean the fee owner of real property as shown in the records of the register of deeds office in the county in which the business area is located. A contract purchaser of real property shall be considered the record owner and the only person entitled to petition pursuant to section 19-4026 or 19-4029.03 or protest pursuant to section 19-4027 or 19-4029.04, if the contract is recorded in the register of deeds office in the county in which the business area is located;

(2) Assessable unit shall mean front foot, square foot, equivalent front foot, or other unit of assessment established under the proposed method of assessment set forth in the ordinance creating a business improvement district;

(3) Space shall mean the square foot space wherein customers, patients, clients, or other invitees are received and space from time to time used or available for use in connection with a business or profession of a user, excepting all space owned or used by political subdivisions; and

(4) Business area shall mean an established area of the city zoned for business, public, or commercial purposes.

Source: Laws 1983, LB 22, § 1; Laws 2015, LB168, § 4.
Effective date August 30, 2015.

19-4020 Business improvement district; created; location.

A business improvement district may be created as provided by the Business Improvement District Act and shall be within the boundaries of a business area.

Source: Laws 1979, LB 251, § 6; Laws 1983, LB 22, § 2; Laws 2015, LB168, § 5.

Effective date August 30, 2015.

19-4021 Business improvement board; membership; powers; duties.

The mayor, with the approval of the city council, shall appoint a business improvement board consisting of property owners, residents, business operators, or users of space within the business area to be improved. The boundaries of the business area shall be declared by resolution of the city council at or prior to the time of the appointment of the board. The board shall make recommendations to the city council for the establishment of a plan or plans for improvements in the business area. If it is found that the improvements to be included in one business area offer benefits that cannot be equitably assessed together under the Business Improvement District Act, more than one business improvement district as part of the same plan for improvements for that business area may be proposed. The board may make recommendations to the city as to the use of any occupation tax funds collected, and may administer such funds if so directed by the mayor and city council. The board shall also review and make recommendations to the city regarding expansion of the boundaries of the business improvement district under sections 19-4029.02 to 19-4029.05.

Source: Laws 1979, LB 251, § 7; Laws 1983, LB 22, § 3; Laws 2015, LB168, § 6.

Effective date August 30, 2015.

19-4024 Repealed. Laws 2015, LB 168, § 21.

19-4025 Transferred to section 19-4029.01.

19-4026 Hearing to create a district; call by petition.

In the event that the city council has not acted to call a hearing to create a district as provided in section 19-4029, it shall do so when presented with a petition signed by the record owners of thirty percent of the assessable front footage in a business area or by the users of thirty percent of space in a business area.

Source: Laws 1979, LB 251, § 12; Laws 1983, LB 22, § 6; Laws 2015, LB168, § 8.

Effective date August 30, 2015.

19-4027 Hearing to create district; city council; duties; protest; effect.

Whenever a hearing is held under section 19-4029, the city council shall:

- (1) Hear all protests and receive evidence for or against the proposed action;
- (2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and
- (3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty percent of the assessable units in the proposed district. If an occupation tax is to be used, proceedings shall terminate if protest is made by users of over fifty percent of the space in the proposed district.

Source: Laws 1979, LB 251, § 13; Laws 1983, LB 22, § 7; Laws 2015, LB168, § 9.
Effective date August 30, 2015.

19-4028 Proposed district; boundary amendment; hearing continued; procedure.

If the city council decides to change the boundaries of the proposed district or to change the proposed modifications to the boundaries of an existing business improvement district or districts from those recommended by the business improvement board, the hearing shall be continued to a time at least fifteen days after such decision and the notice shall be given as prescribed in section 19-4029.01, showing the boundary amendments. The city council may not expand the proposed boundaries recommended by the business improvement board without the council's proposed boundaries being considered by the business improvement board.

Source: Laws 1979, LB 251, § 14; Laws 1983, LB 22, § 8; Laws 2015, LB168, § 10.
Effective date August 30, 2015.

19-4029 City council; ordinance to establish district; when; contents; taxation; basis.

Upon receiving the recommendation from the business improvement board, the city council may create one or more business improvement districts. The city council, following a hearing, may establish or reject any proposed district or districts. If the city council decides to establish any district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

- (1) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with section 19-4029.01;
- (2) The time and place the hearing was held concerning the formation of such district;
- (3) A statement that a business improvement district has been established;
- (4) The purposes of the district, and the public improvements and facilities to be included in such district;
- (5) The description of the boundaries of such district;
- (6) A statement that the businesses and users of space in the district shall be subject to the general business occupation tax or that the real property in the district will be subject to the special assessment authorized by the Business Improvement District Act;
- (7) The proposed method of assessment to be imposed within the district or the initial rate of the occupation tax to be imposed; and
- (8) Any penalties to be imposed for failure to pay the tax or special assessment.

The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Source: Laws 1979, LB 251, § 15; Laws 1983, LB 22, § 9; Laws 2015, LB168, § 11.
Effective date August 30, 2015.

19-4029.01 Notice of hearing; manner given; contents.

(1) A notice of hearing for any hearing under sections 19-4029, 19-4029.02, and 19-4029.03 shall be given by (a) one publication of the notice of hearing in a newspaper of general circulation in the city and (b) mailing a copy of the notice of hearing to each owner of taxable property as shown on the latest tax rolls of the county treasurer for such county. If an occupation tax is to be imposed, a copy of the notice of hearing shall also be mailed to each user of space in the proposed district. Publication and mailing shall be completed at least ten days prior to the time of hearing.

(2) Any notice of hearing for any hearing required by section 19-4029 shall contain the following information:

- (a) A description of the boundaries of the proposed district;
- (b) The time and place of a hearing to be held by the city council to consider establishment of the district;
- (c) The proposed public facilities and improvements to be made or maintained within any such district; and
- (d) The proposed or estimated costs for improvements and facilities within the proposed district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

(3) Any notice of hearing for any hearing required by sections 19-4029.02 and 19-4029.03 shall contain the following information:

- (a) A description of the boundaries of the area to be added to the existing business improvement district and a description of the new boundaries of the modified district;
- (b) The time and place of a hearing to be held by the city council to consider establishment of the modified district;
- (c) The new public facilities and improvements, if any, to be made or maintained within any such district; and
- (d) The proposed or estimated costs for new and existing improvements and facilities within the proposed modified district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

Source: Laws 1979, LB 251, § 11; Laws 1983, LB 22, § 5; R.S.1943, (2012), § 19-4025; Laws 2015, LB168, § 7.
Effective date August 30, 2015.

19-4029.02 Expansion of boundaries; procedure; ordinance; hearing.

Upon receiving the recommendation to expand the boundaries of an existing business improvement district from the business improvement board, the city council may expand the boundaries of one or more business improvement districts by adopting an ordinance to expand the boundaries of a district or districts. Prior to adopting the ordinance, a hearing shall be held to consider the ordinance.

Source: Laws 2015, LB168, § 12.
Effective date August 30, 2015.

19-4029.03 Hearing for expansion of boundaries; call by petition.

In the event that the city council has not acted to call a hearing to expand district boundaries as provided in section 19-4029.02, it shall do so when presented with a petition signed by the users of thirty percent of space in a business area proposed to be added to an existing business improvement district where an occupation tax is imposed or by the record owners of thirty percent of the assessable front footage in a portion of a business area proposed to be added to an existing business improvement district.

Source: Laws 2015, LB168, § 13.
Effective date August 30, 2015.

19-4029.04 Hearing for expansion of boundaries; city council; duties; protest; effect.

Whenever a hearing is held to expand district boundaries under section 19-4029.02 or 19-4029.03, the city council shall:

- (1) Hear all protests and receive evidence for or against the proposed action;
- (2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and
- (3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty percent of the assessable units in the modified district as proposed. If an occupation tax is to be used, proceedings shall terminate if protest is made by users of over fifty percent of space in the modified district as proposed.

Source: Laws 2015, LB168, § 14.
Effective date August 30, 2015.

19-4029.05 Expansion of boundaries; city council; ordinance; when; contents; taxation; basis.

The city council, following a hearing under section 19-4029.02 or 19-4029.03, may expand the boundaries of any district or districts. If the city council decides to expand the boundaries, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

- (1) The name of the district whose boundaries will be expanded;
- (2) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with section 19-4029.01;
- (3) The time and place the hearing was held concerning the new boundaries of such district;

- (4) The purposes of the boundary expansion and any new public improvements and facilities to be included in such district;
- (5) The description of the new boundaries of such district;
- (6) A statement that the businesses and users of space in the modified district established by the ordinance shall be subject to the general business occupation tax or that the real property in the modified district will be subject to the special assessment authorized by the Business Improvement District Act;
- (7) The proposed method of assessment to be imposed within the district or the initial rate of the occupation tax to be imposed; and
- (8) Any penalties to be imposed for failure to pay the tax or special assessment.

The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Source: Laws 2015, LB168, § 15.
Effective date August 30, 2015.

19-4030 Business improvement district; special assessment; purpose; notice; appeal; lien.

A city may levy a special assessment against the real estate located in a business improvement district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of performing any authorized work, except maintenance, repair, and reconstruction costs, within such district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable. Notice of a hearing on any special assessments to be levied under the Business Improvement District Act shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their land. A direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law. All special assessments levied under the act shall be liens on the property and shall be certified for collection and collected in the same manner as special assessments for improvements and street improvement districts of the city are collected.

Source: Laws 1979, LB 251, § 16; Laws 1983, LB 22, § 10; Laws 2015, LB168, § 16.
Effective date August 30, 2015.

19-4033 Assessments or taxes; limitations; effect.

The total amount of assessments or general business occupation taxes levied under the Business Improvement District Act shall not exceed the total costs and expenses of performing the authorized work. The levy of any additional assessment or tax shall not reduce or affect in any manner the assessments previously levied. The assessments or taxes levied must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose.

Source: Laws 1979, LB 251, § 19; Laws 1983, LB 22, § 12; Laws 2015, LB168, § 17.
Effective date August 30, 2015.

19-4037 Funds and grants; use.

The city is authorized to receive, administer, and disburse donated funds or grants of federal or state funds for the purposes of and in the manner authorized by the Business Improvement District Act.

Source: Laws 1979, LB 251, § 23; Laws 2015, LB168, § 18.
Effective date August 30, 2015.

19-4038 Districts created prior to May 23, 1979; governed by act.

Any business improvement district or any downtown improvement and parking district created prior to May 23, 1979, pursuant to sections 19-3401 to 19-3420 or 19-4001 to 19-4014, shall continue in existence and shall hereafter be governed by the Business Improvement District Act.

Source: Laws 1979, LB 251, § 24; Laws 2015, LB168, § 19.
Effective date August 30, 2015.

CHAPTER 20 CIVIL RIGHTS

Article.

1. Individual Rights.
 - (g) Interpreters. 20-150 to 20-159.

ARTICLE 1 INDIVIDUAL RIGHTS

(g) INTERPRETERS

Section

- | | |
|------------|---|
| 20-150. | Legislative findings; licensed interpreters; qualified educational interpreters; legislative intent. |
| 20-151. | Terms, defined. |
| 20-156. | Commission; interpreters; video remote interpreting providers; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized. |
| 20-156.01. | Prohibited acts without license; licensure; application; civil penalty; commission; powers; acts authorized. |
| 20-159. | Fees authorized. |

(g) INTERPRETERS

20-150 Legislative findings; licensed interpreters; qualified educational interpreters; legislative intent.

(1) The Legislature hereby finds and declares that it is the policy of the State of Nebraska to secure the rights of deaf and hard of hearing persons who cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of state agencies and law enforcement personnel unless interpreters are available to assist them. State agencies and law enforcement personnel shall appoint licensed interpreters as provided in sections 20-150 to 20-159, except that courts and probation officials shall appoint interpreters as provided in sections 20-150 to 20-159 and 25-2401 to 25-2407 and public school districts and educational service units shall appoint qualified educational interpreters.

(2) The Commission for the Deaf and Hard of Hearing shall license and evaluate interpreters and video remote interpreting providers pursuant to section 20-156. The commission shall (a) develop licensed interpreter guidelines for distribution, (b) develop training to implement the guidelines, (c) adopt and promulgate rules and regulations to implement the guidelines and requirements for licensed interpreters, and (d) develop a roster of interpreters as required in section 71-4728.

(3) It is the intent of the Legislature to assure that qualified educational interpreters are provided to deaf and hard of hearing children in kindergarten-through-grade-twelve public school districts and educational service units. The State Department of Education shall adopt and promulgate rules and regula-

tions to implement the guidelines and requirements for qualified educational interpreters, and such rules and regulations shall apply to all qualified educational interpreters.

Source: Laws 1987, LB 376, § 1; Laws 1997, LB 851, § 1; Laws 2002, LB 22, § 1; Laws 2006, LB 87, § 1; Laws 2015, LB287, § 1.
Effective date August 30, 2015.

Cross References

Legal proceedings, use of interpreters, see section 25-2401 et seq.

20-151 Terms, defined.

For purposes of sections 20-150 to 20-159, unless the context otherwise requires:

(1) Appointing authority means the state agency or law enforcement personnel required to provide a licensed interpreter pursuant to sections 20-150 to 20-159;

(2) Auxiliary aid includes, but is not limited to, sign language interpreters, oral interpreters, tactile interpreters, other interpreters, notetakers, transcription services, written materials, assistive listening devices, assisted listening systems, videotext displays, and other visual delivery systems;

(3) Deaf or hard of hearing person means a person whose hearing impairment, with or without amplification, is so severe that he or she may have difficulty in auditorily processing spoken language without the use of an interpreter or a person with a fluctuating or permanent hearing loss which may adversely affect the ability to understand spoken language without the use of an interpreter or other auxiliary aid;

(4) Intermediary interpreter means any person, including any deaf or hard of hearing person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language in order to facilitate communication between a deaf or hard of hearing person and an interpreter;

(5) Licensed interpreter means a person who demonstrates proficiencies in interpretation or transliteration as required by the rules and regulations adopted and promulgated by the Commission for the Deaf and Hard of Hearing pursuant to subsection (2) of section 20-150 and who holds a license issued by the commission pursuant to section 20-156. Licensed interpreter includes a licensed video remote interpreting provider;

(6) Oral interpreter means a person who interprets language through facial expression, body language, and mouthing;

(7) State agency means any state entity which receives appropriations from the Legislature and includes the Legislature, legislative committees, executive agencies, courts, and probation officials but does not include political subdivisions;

(8) Tactile interpreter means a person who interprets for a deaf-blind person. The degree of deafness and blindness will determine the mode of communication to be used for each person;

(9) Video remote interpreting services means the use of videoconferencing technology with the intent to provide effective interpreting services; and

(10) Video remote interpreting provider means a person or an entity licensed to provide video remote interpreting services.

Source: Laws 1987, LB 376, § 2; Laws 1997, LB 851, § 2; Laws 2002, LB 22, § 2; Laws 2006, LB 87, § 2; Laws 2015, LB287, § 2.
Effective date August 30, 2015.

20-156 Commission; interpreters; video remote interpreting providers; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized.

(1) The Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. The commission shall create the Interpreter Review Board pursuant to section 71-4728.05 to set policies, standards, and procedures for evaluation and licensing of interpreters. The commission may recognize evaluation and certification programs as a means to carry out the duty of evaluating interpreters' skills. The commission may define and establish different levels or types of licensure to reflect different levels of proficiency and different specialty areas.

(2) The commission shall establish and charge reasonable fees for licensure of interpreters and video remote interpreting providers, including applications, initial competency assessments, renewals, modifications, record keeping, approval, conduct, and sponsorship of continuing education, and assessment of continuing competency pursuant to sections 20-150 to 20-159. All fees collected pursuant to this section by the commission shall be remitted to the State Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

(3) The commission shall prepare and maintain a roster of licensed interpreters as provided by section 71-4728. Nothing in sections 20-150 to 20-159 shall be construed to prevent any appointing authority from contracting with a licensed interpreter on a full-time employment basis.

(4) The commission may deny, refuse to renew, limit, revoke, suspend, or take other disciplinary actions against a license when the applicant or licensee is found to have violated any provision of sections 20-150 to 20-159 or 71-4728 to 71-4732, or any rule or regulation of the commission adopted and promulgated pursuant to such sections, including rules and regulations governing unprofessional conduct. The Interpreter Review Board shall investigate complaints regarding the use of interpreters by any appointing authority, or the providing of interpreting services by any interpreter, alleged to be in violation of sections 20-150 to 20-159 or rules and regulations of the commission. The commission shall notify in writing an appointing authority determined to be employing interpreters in violation of sections 20-150 to 20-159 or rules and regulations of the commission and shall monitor such appointing authority to prevent future violations.

(5) Any decision of the commission pursuant to this section shall be subject to review according to the Administrative Procedure Act.

(6) Any person or entity providing interpreting services pursuant to sections 20-150 to 20-159 without a license issued pursuant to this section may be

restrained by temporary and permanent injunctions and on and after January 1, 2016, shall be subject to a civil penalty as provided in section 20-156.01.

Source: Laws 1987, LB 376, § 7; Laws 1997, LB 752, § 78; Laws 1997, LB 851, § 8; Laws 2002, LB 22, § 6; Laws 2006, LB 87, § 3; Laws 2010, LB706, § 1; Laws 2015, LB287, § 3.
Effective date August 30, 2015.

Cross References

Administrative Procedure Act, see section 84-920.

20-156.01 Prohibited acts without license; licensure; application; civil penalty; commission; powers; acts authorized.

(1) Except as otherwise provided in this section, no person or entity shall (a) practice as an interpreter for the deaf or hard of hearing for compensation, (b) hold himself, herself, or itself out as a licensed interpreter for the deaf or hard of hearing, (c) provide video remote interpreting services, (d) use the title Licensed Interpreter for the Deaf or Licensed Transliterater for the Deaf, or (e) use any other title or abbreviation to indicate that the person or entity is a licensed interpreter unless licensed pursuant to section 20-156.

(2) A person rostered as a qualified interpreter on or before August 30, 2015, may be issued a license pursuant to section 20-156 upon filing an application and paying the fee established by the Commission for the Deaf and Hard of Hearing. Such person shall meet all applicable licensure requirements of sections 20-150 to 20-159 on or before January 1, 2016.

(3)(a) On and after January 1, 2016, any person or entity who practices, offers to practice, or attempts to practice as an interpreter for the deaf or hard of hearing for compensation or as a video remote interpreting provider or holds himself, herself, or itself out as a licensed interpreter without being licensed pursuant to section 20-156 or exempt under this section shall, in addition to any other penalty provided by law, pay a civil penalty to the commission in an amount not to exceed five hundred dollars for each offense as determined by the commission. The civil penalty shall be assessed by the commission after a hearing is held in accordance with section 20-156 and shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(b) The civil penalty shall be paid within sixty days after the date of the order imposing the civil penalty. The order shall constitute a judgment and may be filed and executed in the same manner as any judgment from any court of record.

(c) The commission may investigate any actual, alleged, or suspected unlicensed activity.

(4) An unlicensed person or entity providing interpreting services is not in violation of the licensure requirements of this section if the person or entity is:

(a) Providing interpreting services as part of a religious service;

(b) Notwithstanding other state or federal laws or rules regarding emergency treatment, providing interpreting services, until the services of a licensed interpreter can be obtained if there is continued need for an interpreter, in an emergency situation involving health care in which the patient or his or her representative and a health care provider or health care professional agree that

the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the patient;

(c) Currently enrolled in a course of study leading to a certificate or degree in interpreting if such person is under the direct supervision of a licensed interpreter, engages only in activities and services that constitute a part of such course of study, and clearly designates himself or herself as a student, a trainee, or an intern;

(d) Working as an educational interpreter in compliance with rules and regulations adopted and promulgated by the State Department of Education or working for other purposes in a public school or an educational service unit;

(e) Holding either a certificate or a license as an interpreter in his or her state of residence which he or she has submitted to the commission for approval and either (i) providing interpreting services in Nebraska for a period of time not to exceed fourteen days in a calendar year or (ii) providing interpreting services by telecommunicating, or other use of technological means of communication; or

(f) Employed by or under contract with a person or an entity which is a licensed video remote interpreting provider in this state.

Source: Laws 2015, LB287, § 4.

Effective date August 30, 2015.

20-159 Fees authorized.

A licensed interpreter appointed pursuant to sections 20-150 to 20-159 is entitled to a fee for professional services and other relevant expenses as agreed between the licensed interpreter and the contracting entity. When the licensed interpreter is appointed by a court, the fee shall be paid out of the General Fund with funds appropriated to the Supreme Court for that purpose or from funds, including grant money, made available to the Supreme Court for such purpose. When the licensed interpreter is appointed by an appointing authority other than a court, the fee shall be paid out of funds available to the governing body of the appointing authority.

Source: Laws 1987, LB 376, § 10; Laws 1997, LB 851, § 10; Laws 1999, LB 54, § 2; Laws 2002, LB 22, § 7; Laws 2011, LB669, § 1; Laws 2015, LB287, § 5.

Effective date August 30, 2015.



CHAPTER 21

CORPORATIONS AND OTHER COMPANIES

Article.

1. Nebraska Uniform Limited Liability Company Act.
 - (g) Dissolution and Winding Up. 21-152.
 - (l) Fees. 21-192.
2. Nebraska Model Business Corporation Act.
 - Part 1—General Provisions.
 - Subpart 2—Filing Documents. 21-205.
 - Part 6—Shares and Distributions.
 - Subpart 2—Issuance of Shares. 21-245.
 - Part 9—Domestication and Conversion.
 - Subpart 2—Domestication. 21-2,127, 21-2,128.
 - Subpart 3—Nonprofit Conversion. 21-2,133, 21-2,134.
 - Subpart 5—Entity Conversion. 21-2,143, 21-2,145.
 - Part 14—Dissolution.
 - Subpart 2—Administrative Dissolution. 21-2,195.
 - Part 15—Foreign Corporations.
 - Subpart 1—Certificate of Authority. 21-2,212.
 - Subpart 3—Revocation of Certificate of Authority. 21-2,219.
 - Part 17—Transition Provisions. 21-2,230, 21-2,231.
3. Occupation Tax. 21-323.01, 21-325.01.
4. Nebraska Benefit Corporation Act. 21-402 to 21-414.
17. Credit Unions.
 - (a) Credit Union Act. 21-17,115.
19. Nebraska Nonprofit Corporation Act.
 - (a) General Provisions. 21-1905.
 - (m) Dissolution. 21-19,139.
 - (n) Foreign Corporations. 21-19,159.
20. Business Corporation Act.
 - (a) General Provisions. 21-2005. Repealed.
 - (m) Dissolution. 21-20,160. Repealed.
 - (n) Foreign Corporations. 21-20,177, 21-20,180.01. Repealed.
29. Nebraska Limited Cooperative Association Act.
 - Part 11—Dissolution. 21-2995.

ARTICLE 1

NEBRASKA UNIFORM LIMITED LIABILITY COMPANY ACT

(g) DISSOLUTION AND WINDING UP

Section

21-152. Reinstatement following administrative dissolution.

(l) FEES

21-192. Fees.

(g) DISSOLUTION AND WINDING UP

21-152 Reinstatement following administrative dissolution.

(ULLCA 706) (a) A limited liability company that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its dissolution. The application must be delivered to the Secretary of State for filing and state:

- (1) the name of the company and the effective date of its dissolution;
- (2) that the grounds for dissolution did not exist or have been eliminated; and
- (3) that the company's name satisfies the requirements of section 21-108.

(b) If the Secretary of State determines that an application under subsection (a) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(c) A limited liability company that has been administratively dissolved for more than five years may apply to the Secretary of State for late reinstatement. The application must be delivered to the Secretary of State for filing, along with the fee set forth in section 21-192, and state:

- (1) The name of the company and the effective date of its dissolution;
- (2) That the grounds for dissolution did not exist or have been eliminated;
- (3) That the company's name satisfies the requirements of section 21-108;
- (4) That a legitimate reason exists for reinstatement and what such legitimate reason is; and
- (5) That such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that an application under subsection (c) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(e) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

Source: Laws 2010, LB888, § 52; Laws 2012, LB854, § 1; Laws 2015, LB279, § 1.

Operative date March 19, 2015.

(l) FEES

21-192 Fees.

(1) The filing fee for all filings under the Nebraska Uniform Limited Liability Company Act, including amendments and name reservation, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of organization under section 21-117 and for filing an application for a certificate of authority to transact business in this state as a foreign limited liability company under section 21-156 shall be one hundred dollars plus such recording fees and ten dollars for a certificate. The filing fee for filing a statement of change of address for an agent for service of process shall be ten dollars for each limited liability company or foreign limited liability company for which the agent is designated plus the recording fees set forth in subdivision (4) of section 33-101. There shall be no recording fee collected for the filing of a biennial report required by section 21-125 or any corrections or amendments thereto.

(2) The fee for an application for reinstatement more than five years after the effective date of an administrative dissolution shall be five hundred dollars.

(3) A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file under the act.

(4) The fees for filings under the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. The State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund.

Source: Laws 2010, LB888, § 92; Laws 2014, LB753, § 2; Laws 2015, LB279, § 2.

Operative date March 19, 2015.

ARTICLE 2

NEBRASKA MODEL BUSINESS CORPORATION ACT

Note: The Nebraska Model Business Corporation Act was adopted in 2014 by LB749. The operative date provided by LB749 was January 1, 2016. The operative date was changed by Laws 2015, LB157, section 10, to January 1, 2017.

PART 1—GENERAL PROVISIONS

SUBPART 2—FILING DOCUMENTS

Section

21-205. Filing, service, and copying fees.

PART 6—SHARES AND DISTRIBUTIONS

SUBPART 2—ISSUANCE OF SHARES

21-245. Share options and other awards.

PART 9—DOMESTICATION AND CONVERSION

SUBPART 2—DOMESTICATION

21-2,127. Domestication.

21-2,128. Action on a plan of domestication.

SUBPART 3—NONPROFIT CONVERSION

21-2,133. Nonprofit conversion.

21-2,134. Action on a plan of nonprofit conversion.

SUBPART 5—ENTITY CONVERSION

21-2,143. Entity conversion authorized; definitions.

21-2,145. Action on a plan of entity conversion.

PART 14—DISSOLUTION

SUBPART 2—ADMINISTRATIVE DISSOLUTION

21-2,195. Reinstatement following administrative dissolution.

PART 15—FOREIGN CORPORATIONS

SUBPART 1—CERTIFICATE OF AUTHORITY

21-2,212. Service on foreign corporation.

SUBPART 3—REVOCATION OF CERTIFICATE OF AUTHORITY

21-2,219. Foreign corporation; reinstatement.

PART 17—TRANSITION PROVISIONS

21-2,230. Application to existing domestic corporations.

21-2,231. Application to qualified foreign corporations.

PART 1—GENERAL PROVISIONS

SUBPART 2—FILING DOCUMENTS

21-205 Filing, service, and copying fees.

(MBCA 1.22) (a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

(1) Articles of incorporation, articles of domestication, or articles of domestication and conversion:

- (i) If the capital stock is \$10,000 or less, the fee shall be \$60;
- (ii) If the capital stock is more than \$10,000 but does not exceed \$25,000, the fee shall be \$100;
- (iii) If the capital stock is more than \$25,000 but does not exceed \$50,000, the fee shall be \$150;
- (iv) If the capital stock is more than \$50,000 but does not exceed \$75,000, the fee shall be \$225;
- (v) If the capital stock is more than \$75,000 but does not exceed \$100,000, the fee shall be \$300; and
- (vi) If the capital stock is more than \$100,000, the fee shall be \$300, plus \$3 additional for each \$1,000 in excess of \$100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share;

(2) Articles of incorporation or articles of domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be \$300;

- (3) Application for use of deceptively similar name \$25;
- (4) Application for reserved name \$25;
- (5) Notice of transfer of reserved name \$25;
- (6) Application for registered name \$25;
- (7) Application for renewal of registered name \$25;
- (8) Corporation’s statement of change of registered agent or registered office or both \$25;
- (9) Agent’s statement of change of registered office for each affected corporation \$25 not to exceed a total of \$1,000;
- (10) Agent’s statement of resignation No fee;
- (11) Articles of charter surrender \$25;
- (12) Articles of nonprofit conversion \$25;
- (13) Articles of entity conversion \$25;
- (14) Amendment of articles of incorporation \$25;
- (15) Restatement of articles of incorporation \$25 with amendment of articles \$25;
- (16) Articles of merger or share exchange \$25;
- (17) Articles of dissolution \$45;
- (18) Articles of revocation of dissolution \$25;
- (19) Certificate of administrative dissolution No fee;

(20) Application for reinstatement following administrative dissolution or revocation.....\$25;

(21) Application for reinstatement more than five years after the effective date of an administrative dissolution or administrative revocation.....\$500;

(22) Certificate of reinstatement.....No fee;

(23) Certificate of judicial dissolution.....No fee;

(24) Application for certificate of authority.....\$130;

(25) Application for amended certificate of authority.....\$25;

(26) Application for certificate of withdrawal.....\$25;

(27) Application for transfer of authority.....\$25;

(28) Certificate of revocation of authority to transact business.....No fee;

(29) Articles of correction.....\$25;

(30) Application for certificate of existence or authorization.....\$25; and

(31) Any other document required or permitted to be filed by the Nebraska Model Business Corporation Act.....\$25.

(b) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (a) of this section.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar per page for copying; and

(2) Ten dollars for the certificate.

(d) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 2014, LB749, § 5; Laws 2015, LB279, § 3.

Operative date January 1, 2017.

PART 6—SHARES AND DISTRIBUTIONS

SUBPART 2—ISSUANCE OF SHARES

21-245 Share options and other awards.

(MBCA 6.24) (a) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine (1) the terms upon which the rights, options, or warrants are issued and (2) the terms, including the consideration for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue such rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(b) The terms and conditions of such rights, options, or warrants, including those outstanding on January 1, 2017, may include, without limitation, restrictions or conditions that:

(1) Preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee or transferees of any such person or persons; or

(2) Invalidate or void such rights, options, or warrants held by any such person or persons or any such transferee or transferees.

(c) The board of directors may authorize one or more officers to (1) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares and (2) determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants, or other equity compensation awards and the terms thereof to be received by the recipients, except that an officer may not use such authority to designate himself or herself or any other persons as the board of directors may specify as a recipient of such rights, options, warrants, or other equity compensation awards.

Source: Laws 2014, LB749, § 45; Laws 2015, LB157, § 1.
Operative date January 1, 2017.

PART 9—DOMESTICATION AND CONVERSION

SUBPART 2—DOMESTICATION

21-2,127 Domestication.

(MBCA 9.20) (a) A foreign business corporation may become a domestic business corporation only if the domestication is permitted by the organic law of the foreign corporation.

(b) A domestic business corporation may become a foreign business corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved by the adoption by the corporation of a plan of domestication in the manner provided in sections 21-2,127 to 21-2,132.

(c) The plan of domestication must include:

(1) A statement of the jurisdiction in which the corporation is to be domesticated;

(2) The terms and conditions of the domestication;

(3) The manner and basis of reclassifying the shares of the corporation following its domestication into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) Any desired amendments to the articles of incorporation of the corporation following its domestication.

(d) The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of this state or the other jurisdiction to consummate the domestication, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders under the plan;

(2) The articles of incorporation as they will be in effect immediately following the domestication, except for changes permitted by section 21-2,154 or by comparable provisions of the laws of the other jurisdiction; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2017, contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 127; Laws 2015, LB157, § 2.
Operative date January 1, 2017.

21-2,128 Action on a plan of domestication.

(MBCA 9.21) In the case of a domestication of a domestic business corporation in a foreign jurisdiction:

(1) The plan of domestication must be adopted by the board of directors.

(2) After adopting the plan of domestication, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of domestication requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and if any class or series of shares is entitled to vote as a separate group on the plan, the

approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the domestication by that voting group exists.

(6) Subject to subdivision (7) of this section, separate voting by voting groups is required by each class or series of shares that:

(i) Are to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(ii) Are entitled to vote as a separate group on a provision of the plan that constitutes a proposed amendment to articles of incorporation of the corporation following its domestication that requires action by separate voting groups under section 21-2,153; or

(iii) Is entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subdivision (6)(i) of this section.

(8) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2017, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 128; Laws 2015, LB157, § 3.
Operative date January 1, 2017.

SUBPART 3—NONPROFIT CONVERSION

21-2,133 Nonprofit conversion.

(MBCA 9.30) (a) A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion.

(b) A domestic business corporation may become a foreign nonprofit corporation if the nonprofit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of nonprofit conversion, the foreign nonprofit conversion shall be approved by the adoption by the domestic business corporation of a plan of nonprofit conversion in the manner provided in sections 21-2,133 to 21-2,138.

(c) The plan of nonprofit conversion must include:

(1) The terms and conditions of the conversion;

(2) The manner and basis of reclassifying the shares of the corporation following its conversion into memberships, if any, or securities, obligations, rights to acquire memberships or securities, cash, other property, or any combination of the foregoing;

(3) Any desired amendments to the articles of incorporation of the corporation following its conversion; and

(4) If the domestic business corporation is to be converted to a foreign nonprofit corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.

(d) The plan of nonprofit conversion may also include a provision that the plan may be amended prior to filing articles of nonprofit conversion, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of memberships or securities, obligations, rights to acquire memberships or securities, cash, or other property to be received by the shareholders under the plan;

(2) The articles of incorporation as they will be in effect immediately following the conversion, except for changes permitted by section 21-2,154; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2017, contains a provision applying to a merger of the corporation and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 133; Laws 2015, LB157, § 4.
Operative date January 1, 2017.

21-2,134 Action on a plan of nonprofit conversion.

(MBCA 9.31) In the case of a conversion of a domestic business corporation to a domestic or foreign nonprofit corporation:

(1) The plan of nonprofit conversion must be adopted by the board of directors.

(2) After adopting the plan of nonprofit conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of nonprofit conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder of the meeting of shareholders at which the plan of nonprofit conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the nonprofit conversion.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of nonprofit conversion requires the approval of each class or series of shares of the corporation voting as a separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the nonprofit conversion by that voting group exists.

(6) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2017, applies to a merger, other than a provision that eliminates or limits voting or appraisal rights, and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 134; Laws 2015, LB157, § 5.
Operative date January 1, 2017.

SUBPART 5—ENTITY CONVERSION

21-2,143 Entity conversion authorized; definitions.

(MBCA 9.50) (a) A domestic business corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion.

(b) A domestic business corporation may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

(c) A domestic unincorporated entity may become a domestic business corporation. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of an entity conversion, the conversion shall be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the unincorporated entity. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion shall be adopted and approved, the entity conversion effectuated, and appraisal rights exercised in accordance with the procedures in sections 21-2,143 to 21-2,149 and sections 21-2,171 to 21-2,183. Without limiting the provisions of this subsection, a domestic unincorporated entity whose organic law does not provide procedures for the approval of an entity conversion shall be subject to subsection (e) of this section and subdivision (7) of section 21-2,145. For purposes of applying sections 21-2,143 to 21-2,149 and 21-2,171 to 21-2,183:

(1) The unincorporated entity, its interest holders, interests, and organic documents taken together, shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(2) If the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) A foreign unincorporated entity may become a domestic business corporation if the organic law of the foreign unincorporated entity authorizes it to become a corporation in another jurisdiction.

(e) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2017, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is amended subsequent to that date.

(f) As used in sections 21-2,143 to 21-2,149:

(1) Converting entity means the domestic business corporation or domestic unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity converting to a domestic business corporation; and

(2) Surviving entity means the corporation or unincorporated entity that is in existence immediately after consummation of an entity conversion pursuant to sections 21-2,143 to 21-2,149.

Source: Laws 2014, LB749, § 143; Laws 2015, LB157, § 6.
Operative date January 1, 2017.

21-2,145 Action on a plan of entity conversion.

(MBCA 9.52) In the case of an entity conversion of a domestic business corporation to a domestic or foreign unincorporated entity:

(1) The plan of entity conversion must be adopted by the board of directors.

(2) After adopting the plan of entity conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of entity conversion requires the approval of each class or series of shares of the corporation voting as a separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the conversion by that voting group exists.

(6) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2017, applies to a merger of the corporation, other than

a provision that limits or eliminates voting or appraisal rights, and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is subsequently amended.

(7) If as a result of the conversion one or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall require the signing, by each such shareholder, of a separate written consent to become subject to such owner liability.

Source: Laws 2014, LB749, § 145; Laws 2015, LB157, § 7.
Operative date January 1, 2017.

PART 14—DISSOLUTION

SUBPART 2—ADMINISTRATIVE DISSOLUTION

21-2,195 Reinstatement following administrative dissolution.

(MBCA 14.22) (a) A corporation administratively dissolved under section 21-2,194 may apply to the Secretary of State for reinstatement within five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the corporation's name satisfies the requirements of section 21-230.

(b) If the Secretary of State determines (1) that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct and (2) that the corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites such determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(c) A corporation that has been administratively dissolved under section 21-2,194 for more than five years may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-205, must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of section 21-230;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines (1) that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct and (2) that the corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of late reinstatement that recites such determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(e) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

Source: Laws 2014, LB749, § 195; Laws 2015, LB279, § 4.
Operative date January 1, 2017.

PART 15—FOREIGN CORPORATIONS

SUBPART 1—CERTIFICATE OF AUTHORITY

21-2,212 Service on foreign corporation.

(MBCA 15.10) (a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign corporation's agent for service of process also consents to service of process directed to the foreign corporation's agent in this state for a search warrant issued pursuant to sections 29-812 to 29-821, or for any other validly issued and properly served court order or subpoena, including those authorized under sections 86-2,106 and 86-2,112, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. The consent to service of a court order, subpoena, or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the court order, subpoena, or search warrant is sought.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or the designated custodian of records at its principal office shown in its application for a certificate of authority or in its most recent biennial report if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under section 21-2,213; or

(3) Has had its certificate of authority revoked under section 21-2,218.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Source: Laws 2014, LB749, § 212; Laws 2015, LB294, § 6.
Operative date January 1, 2017.

SUBPART 3—REVOCATION OF CERTIFICATE OF AUTHORITY

21-2,219 Foreign corporation; reinstatement.

(a) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-2,218, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State that the foreign corporation's name satisfies the requirements of section 21-2,208.

(b) If the Secretary of State determines (1) that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct and (2) that the foreign corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(c) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-2,218 for more than five years, may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-205, must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the foreign corporation's name satisfies the requirements of section 21-2,208;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines (1) that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct and (2) that the foreign corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, he or she shall cancel the certificate of revocation, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(e) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

Source: Laws 2014, LB749, § 219; Laws 2015, LB279, § 5.

Operative date January 1, 2017.

PART 17—TRANSITION PROVISIONS

21-2,230 Application to existing domestic corporations.

(MBCA 17.01) The Nebraska Model Business Corporation Act applies to all domestic corporations in existence on January 1, 2017, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Source: Laws 2014, LB749, § 230; Laws 2015, LB157, § 8.

Operative date January 1, 2017.

21-2,231 Application to qualified foreign corporations.

(MBCA 17.02) A foreign corporation authorized to transact business in this state on January 1, 2017, is subject to the Nebraska Model Business Corporation Act but is not required to obtain a new certificate of authority to transact business under the act.

Source: Laws 2014, LB749, § 231; Laws 2015, LB157, § 9.

Operative date January 1, 2017.

ARTICLE 3

OCCUPATION TAX

Section

21-323.01. Domestic corporation administratively dissolved; reinstatement; application; procedure; payment required.

21-325.01. Foreign corporation authority to transact business revoked; reinstatement; procedure.

21-323.01 Domestic corporation administratively dissolved; reinstatement; application; procedure; payment required.

(1)(a) Until January 1, 2017, the provisions of this subsection apply. A corporation automatically dissolved under section 21-323 may apply to the Secretary of State for reinstatement within five years after the effective date of its automatic dissolution. The application shall:

(i) Recite the name of the corporation and the effective date of its automatic dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-2028; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application for reinstatement contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(c) A corporation that has been automatically dissolved under section 21-323 for more than five years may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the corporation and the effective date of its automatic dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-2028;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that an application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of late reinstatement that recites his or her determination and the effective date of the reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the automatic dissolution and the corporation shall resume carrying on its business as if the automatic dissolution had never occurred.

(f) A corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was automatically dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was automatically dissolved; and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was automatically dissolved.

(2)(a) Beginning January 1, 2017, the provisions of this subsection apply. A corporation administratively dissolved under section 21-323 may apply to the

Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-230; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application for reinstatement contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(c) A corporation administratively dissolved under section 21-323 for more than five years may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-230;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its business as if the administrative dissolution had never occurred.

(f) A corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was administratively dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the

years the corporation was administratively dissolved and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was administratively dissolved.

Source: Laws 1995, LB 109, § 198; Laws 1996, LB 1036, § 1; Laws 2003, LB 524, § 12; Laws 2012, LB854, § 2; Laws 2014, LB749, § 254; Laws 2015, LB279, § 6.
Operative date March 19, 2015.

21-325.01 Foreign corporation authority to transact business revoked; reinstatement; procedure.

(1)(a) Until January 1, 2017, the provisions of this subsection apply. A foreign corporation, the certificate of authority of which has been revoked under section 21-325, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-20,173; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(c) A foreign corporation, the certificate of authority of which has been automatically revoked under section 21-325 for more than five years, may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-20,173;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

(f) A foreign corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked; and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

(2)(a) Beginning January 1, 2017, the provisions of this subsection apply. A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-325, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-2,208; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(c) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-325 for more than five years, may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-2,208;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative revocation and the foreign corporation shall resume carrying on its business as if the administrative revocation had never occurred.

(f) A foreign corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked, and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

Source: Laws 1995, LB 109, § 201; Laws 1996, LB 1036, § 2; Laws 2003, LB 524, § 14; Laws 2012, LB854, § 3; Laws 2014, LB749, § 257; Laws 2015, LB279, § 7.

Operative date March 19, 2015.

ARTICLE 4

NEBRASKA BENEFIT CORPORATION ACT

Section

21-402. Applicability of act; Nebraska Model Business Corporation Act generally applicable.

Section

- 21-403. Terms, defined.
- 21-404. Incorporation; articles of incorporation; statement required.
- 21-405. Existing business corporation; amend articles of incorporation; statement required; other entities; procedure.
- 21-407. General public benefit; specific public benefit.
- 21-408. Board of directors, committees of the board, and directors; duties; powers; liability.
- 21-409. Board of directors; benefit director; annual benefit report; contents; liability.
- 21-410. Officer; consider interests and factors; liability; duties.
- 21-412. Limitation on actions and claims; liability; benefit enforcement proceeding; when authorized.
- 21-414. Annual benefit report; distribution; posting; Secretary of State; filing; fee.

21-402 Applicability of act; Nebraska Model Business Corporation Act generally applicable.

- (1) The Nebraska Benefit Corporation Act applies to all benefit corporations.
- (2) The existence of a provision of the Nebraska Benefit Corporation Act does not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. The act does not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.
- (3) Except as otherwise provided in the Nebraska Benefit Corporation Act, the Nebraska Model Business Corporation Act is generally applicable to all benefit corporations. The specific provisions of the Nebraska Benefit Corporation Act control over the general provisions of the Nebraska Model Business Corporation Act. A benefit corporation may be subject simultaneously to the Nebraska Benefit Corporation Act and one or more other statutes that provide for the incorporation of a specific type of business corporation.
- (4) A provision of the articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with, or supersede a provision of the Nebraska Benefit Corporation Act.

Source: Laws 2014, LB751, § 2; Laws 2015, LB35, § 1.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-403 Terms, defined.

The following words and phrases when used in the Nebraska Benefit Corporation Act have the meanings given to them in this section unless the context clearly indicates otherwise:

- (1) Benefit corporation means a business corporation:
- (a) Which has elected to become subject to the act; and
 - (b) The status of which as a benefit corporation has not been terminated;
- (2) Benefit director means the director designated as the benefit director of a benefit corporation under section 21-409;
- (3) Benefit enforcement proceeding means any claim or action or proceeding for:
- (a) Failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or

(b) Violation of any obligation, duty, or standard of conduct under the act;

(4) Benefit officer means the officer designated as the benefit officer of a benefit corporation under section 21-411;

(5) Business corporation means a domestic corporation as defined in section 21-214;

(6) General public benefit means a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation;

(7) Independent means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make an individual not independent. A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(a) The individual is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary;

(b) An immediate family member of the individual is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary; or

(c) There is beneficial or record ownership of five percent or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:

(i) The individual; or

(ii) An entity:

(A) Of which the individual is a director, an officer, or a manager; or

(B) In which the individual owns beneficially or of record five percent or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised;

(8) Minimum status vote means:

(a) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The shareholders of every class or series are entitled to vote separately on a corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series; and

(ii) The corporate action must be approved by a vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action; and

(b) In the case of a domestic entity other than a business corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

(i) The holders of every class or series of equity interests in the entity that are entitled to receive a distribution of any kind from the entity are entitled to vote separately on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series; and

(ii) The action must be approved by a vote or consent of the holders described in subdivision (i) of this subdivision entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action;

(9) Publicly traded corporation means a business corporation that has shares listed on a national securities exchange or traded in a market maintained by one or more members of a national securities association;

(10) Specific public benefit includes:

(a) Providing low-income or underserved individuals or communities with beneficial products or services;

(b) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(c) Protecting or restoring the environment;

(d) Improving human health;

(e) Promoting the arts, sciences, or advancement of knowledge;

(f) Increasing the flow of capital to entities with a purpose to benefit society or the environment; and

(g) Conferring any other particular benefit on society or the environment;

(11) Subsidiary means in relation to a person, an entity in which the person owns beneficially or of record fifty percent or more of the outstanding equity interests; and

(12) Third-party standard means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is:

(a) Comprehensive because it assesses the effect of the business and its operations upon the interests listed in subdivisions (1)(a)(ii), (iii), (iv), and (v) of section 21-408;

(b) Developed by an entity that is not controlled by the benefit corporation;

(c) Credible because it is developed by an entity that both:

(i) Has access to necessary expertise to assess overall corporate social and environmental performance; and

(ii) Uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period; and

(d) Transparent because the following information is publicly available:

(i) About the standard:

(A) The criteria considered when measuring the overall social and environmental performance of a business; and

(B) The relative weightings, if any, of those criteria; and

(ii) About the development and revision of the standard:

(A) The identity of the directors, officers, material owners, and governing body of the entity that developed and controls revisions to the standard;

(B) The process by which revisions to the standard and changes to the membership of the governing body are made; and

(C) An accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

Source: Laws 2014, LB751, § 3; Laws 2015, LB35, § 2.

Operative date January 1, 2017.

21-404 Incorporation; articles of incorporation; statement required.

A benefit corporation shall be incorporated in accordance with the Nebraska Model Business Corporation Act, but its articles of incorporation must also state that it is a benefit corporation.

Source: Laws 2014, LB751, § 4; Laws 2015, LB35, § 3.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-405 Existing business corporation; amend articles of incorporation; statement required; other entities; procedure.

(1) An existing business corporation may become a benefit corporation under the Nebraska Benefit Corporation Act by amending its articles of incorporation so that they contain, in addition to the requirements of section 21-220, a statement that the corporation is a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(2) An entity that is not a benefit corporation may become a benefit corporation pursuant to subsection (1) of this section if the entity is (a) a party to a merger or conversion or (b) an exchanging entity in a share exchange, and the surviving, new, or resulting entity in the merger, conversion, or share exchange is to be a benefit corporation. In order to be effective, a plan of merger, conversion, or share exchange subject to this subsection must be adopted by at least the minimum status vote.

Source: Laws 2014, LB751, § 5; Laws 2015, LB35, § 4.
Operative date January 1, 2017.

21-407 General public benefit; specific public benefit.

(1) A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under section 21-226.

(2) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under section 21-226 and subsection (1) of this section. The identification of a specific public benefit under this subsection does not limit the purpose of a benefit corporation to create general public benefit under subsection (1) of this section.

(3) The creation of general public benefit and specific public benefit under subsections (1) and (2) of this section is in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. In order to be effective, the amendment must be adopted by at least the minimum status vote.

Source: Laws 2014, LB751, § 7; Laws 2015, LB35, § 5.
Operative date January 1, 2017.

21-408 Board of directors, committees of the board, and directors; duties; powers; liability.

(1) In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) Shall consider the effects of any action or inaction upon:

(i) The shareholders of the benefit corporation;

(ii) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers;

(iii) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;

(iv) Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;

(v) The local and global environment;

(vi) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and

(vii) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) May consider other pertinent factors or the interests of any other group that they deem appropriate; and

(c) Need not give priority to the interests of a particular person or group referred to in subdivision (a) or (b) of this subsection over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.

(2) The consideration of interests and factors in the manner required by subsection (1) of this section does not constitute a violation of section 21-2,102.

(3) Except as provided in the articles of incorporation or bylaws, a director is not personally liable for monetary damages for:

(a) Any action or inaction in the course of performing the duties of a director under subsection (1) of this section if the director performed the duties of office in compliance with section 21-2,102 and this section; or

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(5) A director who makes a business judgment in good faith fulfills the duty under this section if the director:

(a) Is not interested in the subject of the business judgment;

(b) Is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and

(c) Rationally believes that the business judgment is in the best interests of the benefit corporation.

Source: Laws 2014, LB751, § 8; Laws 2015, LB35, § 6.
Operative date January 1, 2017.

21-409 Board of directors; benefit director; annual benefit report; contents; liability.

(1) The board of directors of a benefit corporation that is a publicly traded corporation shall, and the board of any other benefit corporation may, include a director, who:

(a) Shall be designated the benefit director; and

(b) Shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(2) The benefit director shall be elected and may be removed in the manner provided by the Nebraska Model Business Corporation Act. The benefit director shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(3) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by section 21-413, the opinion of the benefit director on all of the following:

(a) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the benefit report;

(b) Whether the directors and officers complied with subsection (1) of section 21-408 and subsection (1) of section 21-410, respectively; and

(c) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in subdivisions (3)(a) and (b) of this subsection, a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.

(4) The action or inaction of an individual in the capacity of a benefit director constitutes for all purposes an action or inaction of that individual in the capacity of a director of the benefit corporation.

(5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by section 21-220, a benefit director is not personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

Source: Laws 2014, LB751, § 9; Laws 2015, LB35, § 7.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-410 Officer; consider interests and factors; liability; duties.

(1) Each officer of a benefit corporation shall consider the interests and factors described in subsection (1) of section 21-408 in the manner provided in that subsection if:

(a) The officer has discretion to act with respect to a matter; and

(b) It reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

(2) The consideration of interests and factors in the manner described in subsection (1) of this section does not constitute a violation of section 21-2,107.

(3) Except as provided in the articles of incorporation or bylaws, an officer is not personally liable for monetary damages for:

(a) An action or inaction as an officer in the course of performing the duties of an officer under subsection (1) of this section if the officer performed the duties of the position in compliance with section 21-2,107 and this section; or

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(5) An officer who makes a business judgment in good faith fulfills the duty under this section if the officer:

(a) Is not interested in the subject of the business judgment;

(b) Is informed with respect to the subject of the business judgment to the extent the officer reasonably believes to be appropriate under the circumstances; and

(c) Rationally believes that the business judgment is in the best interests of the benefit corporation.

Source: Laws 2014, LB751, § 10; Laws 2015, LB35, § 8.
Operative date January 1, 2017.

21-412 Limitation on actions and claims; liability; benefit enforcement proceeding; when authorized.

(1)(a) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(i) Failure to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation; or

(ii) Violation of an obligation, duty, or standard of conduct under the Nebraska Benefit Corporation Act.

(b) A benefit corporation is not liable for monetary damages under the act for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(2) A benefit enforcement proceeding may be commenced or maintained only:

(a) Directly by the benefit corporation; or

(b) Derivatively in accordance with the Nebraska Model Business Corporation Act by:

(i) A person or group of persons that owned beneficially or of record at least two percent of the total number of shares of a class or series outstanding at the time of the act or omission complained of;

(ii) A director;

(iii) A person or group of persons that owned beneficially or of record five percent or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or

(iv) Other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

(3) For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

Source: Laws 2014, LB751, § 12; Laws 2015, LB35, § 9.
Operative date January 1, 2017.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-414 Annual benefit report; distribution; posting; Secretary of State; filing; fee.

(1) A benefit corporation shall send its annual benefit report to each shareholder:

(a) Within one hundred twenty days following the end of the fiscal year of the benefit corporation; or

(b) At the same time that the benefit corporation delivers any other annual report to its shareholders.

(2) A benefit corporation shall post all of its benefit reports on the public portion of its Internet web site, if any, except that the compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

(3) If a benefit corporation does not have an Internet web site, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, except that the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(4)(a) Concurrently with the delivery of the benefit report to shareholders under subsection (1) of this section, the benefit corporation shall deliver a copy of the benefit report to the Secretary of State for filing, except that the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the benefit report as delivered to the Secretary of State.

(b) The Secretary of State shall charge a fee in the amount prescribed in subdivision (1)(z) of section 21-2005 prior to January 1, 2017, and in the

amount prescribed in subdivision (a)(30) of section 21-205 on and after January 1, 2017, for filing a benefit report. The fee shall be remitted to the State Treasurer for credit to the Corporation Cash Fund.

Source: Laws 2014, LB751, § 14; Laws 2015, LB35, § 10; Laws 2015, LB279, § 8.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB35, section 10, with LB279, section 8, to reflect all amendments.

Note: Changes made by LB279 became operative March 19, 2015. Changes made by LB35 became operative January 1, 2017.

ARTICLE 17

CREDIT UNIONS

(a) CREDIT UNION ACT

Section

21-17,115. Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

(a) CREDIT UNION ACT

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2015, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126, § 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21; Laws 2008, LB851, § 17; Laws 2009, LB327, § 15; Laws 2010, LB890, § 14; Laws 2011, LB74, § 5; Laws 2012, LB963, § 22; Laws 2013, LB213, § 13; Laws 2014, LB712, § 3; Laws 2015, LB286, § 3.

Effective date March 6, 2015.

ARTICLE 19

NEBRASKA NONPROFIT CORPORATION ACT

(a) GENERAL PROVISIONS

Section
21-1905. Fees.

(m) DISSOLUTION

21-19,139. Reinstatement following administrative dissolution.

(n) FOREIGN CORPORATIONS

21-19,159. Foreign corporation; revoked certificate; application for reinstatement.

(a) GENERAL PROVISIONS

21-1905 Fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

- (1)(i) Articles of incorporation or (ii) documents relating to domestication\$10.00
- (2) Application for reserved name\$25.00
- (3) Notice of transfer of reserved name\$25.00
- (4) Application for registered name\$25.00
- (5) Application for renewal of registered name\$25.00
- (6) Corporation’s statement of change of registered agent or registered office or both\$5.00
- (7) Agent’s statement of change of registered office for each affected corporation\$25.00 (not to exceed a total of \$1,000)
- (8) Agent’s statement of resignationno fee
- (9) Amendment of articles of incorporation\$5.00
- (10) Restatement of articles of incorporation with amendments\$5.00
- (11) Articles of merger\$5.00
- (12) Articles of dissolution\$5.00
- (13) Articles of revocation of dissolution\$5.00
- (14) Certificate of administrative dissolutionno fee
- (15) Application for reinstatement following administrative dissolution\$5.00
- (16) Application for reinstatement more than five years after the effective date of an administrative dissolution or administrative revocation\$500.00
- (17) Certificate of reinstatementno fee
- (18) Certificate of judicial dissolutionno fee
- (19) Certificate of authority\$10.00
- (20) Application for amended certificate of authority\$5.00
- (21) Application for certificate of withdrawal\$5.00
- (22) Certificate of revocation of authority to transact businessno fee

(23) Biennial report \$20.00

(24) Articles of correction \$5.00

(25) Application for certificate of good standing \$10.00

(26) Any other document required or permitted to be filed by the Nebraska Nonprofit Corporation Act \$5.00

(i) Amendments \$5.00

(ii) Mergers \$5.00

(b) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (a) of this section.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) \$1.00 per page; and

(2) \$10.00 for the certificate.

(d) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1996, LB 681, § 5; Laws 2008, LB907, § 1; Laws 2015, LB279, § 9.

Operative date March 19, 2015.

(m) DISSOLUTION

21-19,139 Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under section 21-19,138 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the corporation's name satisfies the requirements of section 21-1931.

(b) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(c) A corporation that has been administratively dissolved under section 21-19,138 for more than five years may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-1905, must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of section 21-1931;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of late reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

Source: Laws 1996, LB 681, § 139; Laws 2012, LB854, § 4; Laws 2015, LB279, § 10.

Operative date March 19, 2015.

(n) FOREIGN CORPORATIONS

21-19,159 Foreign corporation; revoked certificate; application for reinstatement.

(a) A foreign corporation the certificate of authority of which has been revoked under section 21-19,158 may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State that the foreign corporation's name satisfies the requirements of section 21-19,151.

(b) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(c) A foreign corporation, the certificate of authority of which has been revoked under section 21-19,158 for more than five years, may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-1905, must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the foreign corporation's name satisfies the requirements of section 21-19,151;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of late reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its activities as if the revocation had never occurred.

Source: Laws 1996, LB 681, § 159; Laws 2012, LB854, § 5; Laws 2015, LB279, § 11.

Operative date March 19, 2015.

ARTICLE 20

BUSINESS CORPORATION ACT

(a) GENERAL PROVISIONS

Section

21-2005.

Fees.

21-2005.

Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.

(m) DISSOLUTION

21-20,160.

Administrative dissolution; reinstatement.

21-20,160.

Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.

(n) FOREIGN CORPORATIONS

21-20,177.

Foreign corporation; service; consent to service of search warrant or subpoena.

21-20,177.

Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB294, § 25.

21-20,180.01.

Foreign corporation; revocation of certificate of authority; reinstatement; procedure; effect.

21-20,180.01.

Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.

(a) GENERAL PROVISIONS

21-2005 Fees.

(1) The Secretary of State shall collect the fees prescribed by this section when the documents described in this subsection are delivered to him or her for filing:

(a) Articles of incorporation or documents relating to domestication:

(i) If the capital stock is \$10,000 or less, the fee shall be \$60;

(ii) If the capital stock is more than \$10,000 but does not exceed \$25,000, the fee shall be \$100;

(iii) If the capital stock is more than \$25,000 but does not exceed \$50,000, the fee shall be \$150;

(iv) If the capital stock is more than \$50,000 but does not exceed \$75,000, the fee shall be \$225;

(v) If the capital stock is more than \$75,000 but does not exceed \$100,000, the fee shall be \$300; and

(vi) If the capital stock is more than \$100,000, the fee shall be \$300, plus \$3 additional for each \$1,000 in excess of \$100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share.

(b) Articles of incorporation or documents relating to domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be \$300.

(c) Application for reserved name \$25

(d) Notice of transfer of reserved name \$25

(e) Application for registered name \$25

(f) Application for renewal of registered name \$25

(g) Corporation's statement of change of registered agent or registered office or both \$25

(h) Agent's statement of change of registered office for each affected corporation \$25 not to exceed a total of \$1,000

(i) Agent's statement of resignation No fee

(j) Amendment of articles of incorporation \$25

(k) Restatement of articles of incorporation \$25 with amendment of articles \$25

(l) Articles of merger, share exchange, or conversion \$25

(m) Articles of dissolution \$45

(n) Articles of revocation of dissolution \$25

(o) Certificate of administrative dissolution No fee

(p) Application for reinstatement \$25

(q) Application for reinstatement more than five years after the effective date of an administrative dissolution or administrative revocation \$500

(r) Certificate of reinstatement No fee

(s) Certificate of judicial dissolution No fee

(t) Application for certificate of authority \$130

(u) Application for amended certificate of authority \$25

(v) Application for certificate of withdrawal \$25

(w) Certificate of revocation of authority to transact business No fee

(x) Articles of correction \$25

(y) Application for certificate of existence or authorization \$25

(z) Any other document required or permitted to be filed by the Business Corporation Act \$25.

(2) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (1) of this section.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (a) One dollar per page for copying; and
- (b) Ten dollars for the certificate.

(4) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1995, LB 109, § 5; Laws 1996, LB 1036, § 5; Laws 2007, LB117, § 1; Laws 2008, LB907, § 2; Laws 2012, LB1018, § 2; Laws 2015, LB279, § 12.
Operative date March 19, 2015.

21-2005 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.

Operative date January 1, 2017.

(m) DISSOLUTION

21-20,160 Administrative dissolution; reinstatement.

(1) A corporation administratively dissolved under section 21-20,159 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall:

- (a) Recite the name of the corporation and the effective date of its administrative dissolution;
- (b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and
- (c) State that the corporation's name satisfies the requirements of section 21-2028.

(2) If the Secretary of State determines (a) that the application for reinstatement contains the information required by subsection (1) of this section and that the information is correct, and (b) that the corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, he or she shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(3) A corporation that has been administratively dissolved under section 21-20,159 for more than five years may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-2005, shall:

- (a) Recite the name of the corporation and the effective date of its administrative dissolution;
- (b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the corporation's name satisfies the requirements of section 21-2028;

(d) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(e) State that such reinstatement does not constitute fraud on the public.

(4) If the Secretary of State determines (a) that the application for late reinstatement contains the information required by subsection (3) of this section and that the information is correct and (b) that the corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, he or she shall cancel the certificate of dissolution and prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(5) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its business as if the administrative dissolution had never occurred.

Source: Laws 1995, LB 109, § 160; Laws 2012, LB854, § 6; Laws 2015, LB279, § 13.

Operative date March 19, 2015.

Cross References

Biennial report, see section 21-301.

Occupation tax, see Chapter 21, article 3.

21-20,160 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.

Operative date January 1, 2017.

(n) FOREIGN CORPORATIONS

21-20,177 Foreign corporation; service; consent to service of search warrant or subpoena.

(1) The registered agent of a foreign corporation authorized to transact business in this state shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign corporation's agent for service of process shall also consent to service of process directed to the foreign corporation's agent in Nebraska for a search warrant issued pursuant to sections 29-812 to 29-821, or for any other validly issued and properly served court order or subpoena, including those authorized under sections 86-2,106 and 86-2,112, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. The consent to service of a court order, subpoena, or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the court order, subpoena, or search warrant is sought.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or the designated custodian of records at its principal office shown in its application

for a certificate of authority or in its most recent annual report if the foreign corporation has:

(a) No registered agent or its registered agent cannot with reasonable diligence be served;

(b) Withdrawn from transacting business in this state under section 21-20,178; or

(c) Had its certificate of authority revoked under section 21-20,180.

(3) Service shall be perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark if mailed postage prepaid and correctly addressed.

(4) This section shall not be construed to prescribe the only means or necessarily the required means of serving a foreign corporation.

Source: Laws 1995, LB 109, § 177; Laws 2009, LB97, § 1; Laws 2015, LB294, § 7.

Operative date May 20, 2015.

21-20,177 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB294, § 25.

Operative date January 1, 2017.

21-20,180.01 Foreign corporation; revocation of certificate of authority; reinstatement; procedure; effect.

(1) A foreign corporation, the certificate of authority of which has been revoked under section 21-20,180, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(a) Recite the name of the foreign corporation and the effective date of the revocation;

(b) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(c) State that the foreign corporation's name satisfies the requirements of section 21-20,173.

(2) If the Secretary of State determines (a) that the application for reinstatement contains the information required by subsection (1) of this section and that the information is correct and (b) that the foreign corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(3) A foreign corporation, the certificate of authority of which has been revoked under section 21-20,180 for more than five years, may apply to the

Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-2005, shall:

(a) Recite the name of the foreign corporation and the effective date of the revocation;

(b) State that the ground or grounds for revocation either did not exist or have been eliminated;

(c) State that the foreign corporation's name satisfies the requirements of section 21-20,173;

(d) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(e) State that such reinstatement does not constitute fraud on the public.

(4) If the Secretary of State determines (a) that the application for late reinstatement contains the information required by subsection (3) of this section and that the information is correct and (b) that the foreign corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, he or she shall cancel the certificate of revocation, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original certificate, and serve a copy on the foreign corporation under section 21-20,177.

(5) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

Source: Laws 1996, LB 1036, § 6; Laws 2012, LB854, § 7; Laws 2015, LB279, § 14.

Operative date March 19, 2015.

Cross References

Biennial report, see section 21-304.

Occupation tax, see Chapter 21, article 3.

21-20,180.01 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.

Operative date January 1, 2017.

ARTICLE 29

NEBRASKA LIMITED COOPERATIVE ASSOCIATION ACT

PART 11—DISSOLUTION

Section

21-2995. Reinstatement following administrative dissolution.

PART 11—DISSOLUTION

21-2995 Reinstatement following administrative dissolution.

(1) A limited cooperative association that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall be delivered to the Secretary of State for filing and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908.

(2) If the Secretary of State determines that (a) the application for reinstatement contains the information required by subsection (1) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

(a) Prepare a declaration of reinstatement that states this determination;

(b) Sign and file the original of the declaration of reinstatement; and

(c) Serve the limited cooperative association with a copy.

(3) A limited cooperative association that has been administratively dissolved for more than five years may apply to the Secretary of State for late reinstatement. The application shall be delivered to the Secretary of State for filing, along with the fee set forth in section 21-2924, and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated;

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908;

(d) That a legitimate reason exists for reinstatement and what such legitimate reason is; and

(e) That such reinstatement does not constitute fraud on the public.

(4) If the Secretary of State determines that (a) the application for late reinstatement contains the information required by subsection (3) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

(a) Prepare a declaration of late reinstatement that states this determination;

(b) Sign and file the original of the declaration of reinstatement; and

(c) Serve the limited cooperative association with a copy.

(5) When reinstatement becomes effective it relates back to and takes effect as of the effective date of the administrative dissolution and the limited cooperative association may resume or continue its activities as if the administrative dissolution had never occurred.

Source: Laws 2007, LB368, § 95; Laws 2012, LB854, § 8; Laws 2015, LB279, § 15.

Operative date March 19, 2015.



**CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS**

Article.

- 1. General Provisions.
 - (b) Powers and Duties of County Board. 23-135.01.
 - (c) Commissioner System. 23-148.
 - (j) Ordinances. 23-187.
- 2. Counties under Township Organization.
 - (e) Termination of Township Board. 23-2,100.
- 3. Provisions Applicable to Various Projects.
 - (c) Flood Control. 23-316, 23-317.
- 11. Salaries of County Officers. 23-1118.
- 19. County Surveyor and Engineer. 23-1901 to 23-1911.
- 23. County Employees Retirement. 23-2301 to 23-2322.
- 34. Public Defender. 23-3406, 23-3408.

**ARTICLE 1
GENERAL PROVISIONS**

(b) POWERS AND DUTIES OF COUNTY BOARD

Section

23-135.01. Claims; false statements or representations; penalties.

(c) COMMISSIONER SYSTEM

23-148. Commissioners; number; election; when authorized.

(j) ORDINANCES

23-187. Subjects regulated; power to enforce.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-135.01 Claims; false statements or representations; penalties.

Whoever files any claim against any county as provided in section 23-135, knowing the claim to contain any false statement or representation as to a material fact, or whoever obtains or receives any money or any warrant for money from any county knowing that the claim therefor was based on a false statement or representation as to a material fact, if the amount claimed or money obtained or received or if the face value of the warrant for money shall be one thousand five hundred dollars or more, shall be guilty of a Class IV felony. If the amount is five hundred dollars or more but less than one thousand five hundred dollars, the person so offending shall be guilty of a Class II misdemeanor. If the amount is less than five hundred dollars, the person so offending shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 59, § 2, p. 277; Laws 1977, LB 40, § 84; Laws 2015, LB605, § 5.
Effective date August 30, 2015.

(c) COMMISSIONER SYSTEM

23-148 Commissioners; number; election; when authorized.

The county board of commissioners in all counties having not more than three hundred thousand inhabitants shall consist of three persons except as follows:

(1) The registered voters in any county containing not more than three hundred thousand inhabitants may vote at any general election as to whether their county board shall consist of three or five commissioners. Upon the completion of the canvass by the county canvassing board, the proposition shall be decided and, if the number of commissioners is increased from three to five commissioners, vacancies shall be deemed to exist and the procedures set forth in sections 32-567 and 32-574 shall be instituted; and

(2) The registered voters of any county under township organization voting to discontinue township organization may also vote as to the number of county commissioners as provided in sections 23-292 to 23-299.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 225; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 77; Laws 1919, c. 69, § 1, p. 182; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-148; Laws 1945, c. 42, § 1, p. 202; Laws 1947, c. 62, § 2, p. 197; Laws 1951, c. 48, § 1, p. 165; Laws 1957, c. 60, § 1, p. 278; Laws 1979, LB 331, § 2; Laws 1985, LB 53, § 1; Laws 1991, LB 789, § 4; Laws 1994, LB 76, § 534; Laws 2008, LB269, § 1; Laws 2015, LB575, § 3.

Operative date August 30, 2015.

Cross References

For discontinuance of township organization, see sections 23-292 to 23-299.

(j) ORDINANCES

23-187 Subjects regulated; power to enforce.

(1) In addition to the powers granted by section 23-104, a county may, in the manner specified by sections 23-187 to 23-193, regulate the following subjects by ordinance:

(a) Parking of motor vehicles on public roads, highways, and rights-of-way as it pertains to snow removal for and access by emergency vehicles to areas within the county;

(b) Motor vehicles as defined in section 60-339 that are abandoned on public or private property;

(c) Low-speed vehicles as described and operated pursuant to section 60-6,380;

(d) Golf car vehicles as described and operated pursuant to section 60-6,381;

(e) Graffiti on public or private property;

(f) False alarms from electronic security systems that result in requests for emergency response from law enforcement or other emergency responders;

(g) Violation of the public peace and good order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity; and

(h) Peddlers, hawkers, or solicitors operating for commercial purposes. If a county adopts an ordinance under this subdivision, the ordinance shall provide for registration of any such peddler, hawker, or solicitor without any fee and

allow the operation or conduct of any registered peddler, hawker, or solicitor in all areas of the county where the county has jurisdiction and where a city or village has not otherwise regulated such operation or conduct.

(2) For the enforcement of any ordinance authorized by this section, a county may impose fines, forfeitures, or penalties and provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties. A county may also authorize such other measures for the enforcement of ordinances as may be necessary and proper. A fine enacted pursuant to this section shall not exceed five hundred dollars for each offense.

Source: Laws 2009, LB532, § 1; Laws 2011, LB289, § 2; Laws 2012, LB1155, § 1; Laws 2015, LB577, § 1.
Effective date August 30, 2015.

ARTICLE 2

COUNTIES UNDER TOWNSHIP ORGANIZATION

(e) TERMINATION OF TOWNSHIP BOARD

Section

23-2,100. Termination of township board; public hearing; notice; resolution; termination date; conduct of business; disposal of property; discontinuance of township organization of county.

(e) TERMINATION OF TOWNSHIP BOARD

23-2,100 Termination of township board; public hearing; notice; resolution; termination date; conduct of business; disposal of property; discontinuance of township organization of county.

(1) If a township board has become inactive, the county board of supervisors shall hold a public hearing on the issue of termination of the township board. Notice of the hearing shall be published for two consecutive weeks in a newspaper of general circulation in the county. For purposes of this section, a township board has become inactive when two or more board positions are vacant and the county board has been unable to fill such positions in accordance with sections 32-567 and 32-574 for six or more months.

(2) If no appointment to the township board has been made within thirty days after the public hearing because no resident of the township has provided written notice to the county board that he or she will serve on the township board, the county board may adopt a resolution to terminate the township board. The resolution shall state the effective date of the termination.

(3) Between the date of the public hearing and the date of termination of the township board, the business of the township shall be handled according to this subsection. No tax distributions shall be made to the township. Such funds shall be held by the county board in a separate township fund and disbursed only to pay outstanding obligations of the township board. All claims against the township board shall be filed with the county clerk and heard by the county board. Upon allowance of a claim, the county board shall direct the county clerk to draw a warrant upon the township fund. The warrant shall be signed by the chairperson of the county board and countersigned by the county clerk.

(4) Upon termination of a township board, the county board shall settle all unfinished business of the township board and shall dispose of all property under ownership of the township. Any proceeds of such sale shall first be

disbursed to pay any outstanding obligations of the township, and remaining funds shall be credited to the road fund of the county board. Any remaining township board members serving as of the date of termination shall deposit with the county clerk all township records, papers, and documents pertaining to the affairs of the township and shall certify to the county clerk the amount of outstanding indebtedness in existence on the date of termination. The county board shall levy a tax upon the taxable property located within the boundaries of the township to pay for construction and maintenance of township roads within the township and any outstanding indebtedness not paid for under this subsection. The county board shall have continuing authority to construct and maintain township roads within the township and to perform the functions provided in section 23-224 until such time as the township board is reconstituted by general election that results in the filling of all vacancies on the township board.

(5) If more than fifty percent of the township boards in a county have been terminated, the county board shall file with the election commissioner or county clerk a resolution supporting the discontinuance of the township organization of the county pursuant to subsection (2) of section 23-293.

Source: Laws 2010, LB768, § 1; Laws 2012, LB936, § 1; Laws 2015, LB65, § 1; Laws 2015, LB575, § 4.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB65, section 1, with LB575, section 4, to reflect all amendments.

Note: Changes made by LB65 became effective February 27, 2015. Changes made by LB575 became operative August 30, 2015.

ARTICLE 3

PROVISIONS APPLICABLE TO VARIOUS PROJECTS

(c) FLOOD CONTROL

Section

23-316. Levees; dikes; construction; special assessments.

23-317. Levees; dikes; special assessments; entry on tax list; lien.

(c) FLOOD CONTROL

23-316 Levees; dikes; construction; special assessments.

As soon as the contract or contracts are let for the construction of the work as provided in section 23-315, the supervisors or board of county commissioners shall levy a special assessment on all the lands specially benefited in accordance with the benefits received as confirmed and adjudged in a sum as may be necessary to pay for the work and all costs and expenses accrued or to accrue, not exceeding the whole benefit upon any one tract.

Source: Laws 1921, c. 269, § 8, p. 896; C.S.1922, § 1033; C.S.1929, § 26-727; R.S.1943, § 23-316; Laws 2015, LB361, § 47.
Effective date August 30, 2015.

23-317 Levees; dikes; special assessments; entry on tax list; lien.

The board of supervisors or county commissioners shall cause the special assessment made upon the lands benefited as provided in section 23-316 to be entered upon the tax lists of the county as provided in cases of special assessments, which assessment shall constitute a lien on the real estate respectively assessed and shall be collected as other special assessments are collected.

One-tenth of each assessment shall be collected each year for a period of ten years with interest at the rate of seven percent per annum on deferred payments, unless paid in full as herein provided.

Source: Laws 1921, c. 269, § 9, p. 896; C.S.1922, § 1034; C.S.1929, § 26-728; R.S.1943, § 23-317; Laws 2015, LB361, § 48.
Effective date August 30, 2015.

ARTICLE 11

SALARIES OF COUNTY OFFICERS

Section

23-1118. Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

23-1118 Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

(1)(a) Unless the county has adopted a retirement system pursuant to section 23-2329, the county board of any county having a population of one hundred fifty thousand inhabitants or more, as determined by the most recent federal decennial census, may, in its discretion and with the approval of the voters, provide retirement benefits for present and future employees of the county. The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary cost being treated in the county budget in the same way as any other operating expense.

(b) Except as provided in subdivision (c) of this subsection, each employee shall be required to contribute, or have contributed on his or her behalf, an amount at least equal to the county's contribution to the cost of any such retirement program as to service performed after the adoption of such retirement program, but the cost of any benefits based on prior service shall be borne solely by the county.

(c) In a county or municipal county having a population of two hundred fifty thousand or more inhabitants but not more than five hundred thousand inhabitants, as determined by the most recent federal decennial census, the county or municipal county shall establish the employee and employer contribution rates to the retirement program for each year after July 15, 1992. The county or municipal county shall contribute one hundred fifty percent of each employee's mandatory contribution, and for an employee hired on or after July 1, 2012, the county or municipal county shall contribute at least one hundred percent of each such employee's mandatory contribution, except that an employee receiving a one hundred fifty percent employer contribution under this subdivision may irrevocably elect to switch to a one hundred percent contribution for all future contributions. The combined contributions of the county or municipal county and its employees to the cost of any such retirement program shall not exceed sixteen percent of the employees' salaries.

(2) Before the county board or council provides retirement benefits for the employees of the county or municipal county, such question shall be submitted at a regular general or primary election held within the county or municipal county, and in which election all persons eligible to vote for the officials of the county or municipal county shall be entitled to vote on such question, which

shall be submitted in the following language: Shall the county board or council provide retirement benefits for present and future employees of the county or municipal county? If a majority of the votes cast upon such question are in favor of such question, then the county board or council shall be empowered to provide retirement benefits for present and future employees as provided in this section. If such retirement benefits for present and future county and municipal county employees are approved by the voters and authorized by the county board or council, then the funds of such retirement system, in excess of the amount required for current operations as determined by the county board or council, may be invested and reinvested in the class of securities and investments described in section 30-3209.

(3) As used in this section, employees shall mean all persons or officers devoting more than twenty hours per week to employment by the county or municipal county, all elected officers of the county or municipal county, and such other persons or officers as are classified from time to time as permanent employees by the county board or council.

(4) The county or municipal county may pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the county or municipal county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The county or municipal county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The county or municipal county shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date picked up.

(5)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the county board or council with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board a report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the county board of a county or council of the municipal county with a retirement plan established pursuant to this section shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the county board or council does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the county or municipal county. All costs of the audit shall be paid by the county or municipal county. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1961, c. 97, § 1, p. 327; Laws 1967, c. 257, § 3, p. 680; Laws 1967, c. 129, § 1, p. 412; Laws 1984, LB 216, § 1; Laws 1985, LB 353, § 2; Laws 1992, LB 672, § 30; Laws 1995, LB 369, § 1; Laws 1995, LB 574, § 30; Laws 1998, LB 1191, § 22; Laws 1999, LB 795, § 10; Laws 2001, LB 142, § 31; Laws 2011, LB474, § 10; Laws 2012, LB867, § 1; Laws 2014, LB759, § 15; Laws 2015, LB41, § 1; Laws 2015, LB126, § 1.
Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB41, section 1, with LB126, section 1, to reflect all amendments.

ARTICLE 19

COUNTY SURVEYOR AND ENGINEER

Section

- 23-1901. County surveyor; county engineer; qualifications; powers and duties.
- 23-1908. Corners; establishment and restoration; rules governing.
- 23-1911. Surveys; records; contents; available to public.

23-1901 County surveyor; county engineer; qualifications; powers and duties.

(1) It shall be the duty of the county surveyor to make or cause to be made all surveys within his or her county that the county surveyor may be called upon to make and record the same.

(2) In all counties having a population of at least fifty thousand inhabitants but less than one hundred fifty thousand inhabitants, the county surveyor shall be ex officio county engineer and shall be either a professional engineer as provided in the Engineers and Architects Regulation Act or a registered land surveyor as provided in the Land Surveyors Regulation Act or both. In such counties, the office of surveyor shall be full time.

In counties having a population of one hundred fifty thousand inhabitants or more, a county engineer shall be a professional engineer as provided in the act and shall be elected as provided in section 32-526.

(3) The county engineer or ex officio county engineer shall:

(a) Prepare all plans, specifications, and detail drawings for the use of the county in advertising and letting all contracts for the building and repair of bridges, culverts, and all public improvements upon the roads;

(b) Make estimates of the cost of all such contemplated public improvements, make estimates of all material required for such public improvements, inspect the material and have the same measured and ascertained, and report to the county board whether the same is in accordance with its requirements;

(c) Superintend the construction of all such public improvements and inspect and require that the same shall be done according to contract;

(d) Make estimates of the cost of all labor and material which shall be necessary for the construction of all bridges and improvements upon public highways, inspect all of the work and materials placed in any such public improvements, and make a report in writing to the county board with a statement in regard to whether the same comply with the plans, specifications, and detail drawings of the county board prepared for such work or improvements and under which the contract was let; and

(e) Have charge and general supervision of work or improvements authorized by the county board, inspect all materials, direct the work, and make a report of each piece of work to the county board.

The county engineer or surveyor shall also have such other and further powers as are necessarily incident to the general powers granted.

(4) The county surveyor shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(5) In counties having a population of one hundred fifty thousand inhabitants or more, the county engineer shall appoint a full-time county surveyor. The county surveyor shall perform all the duties prescribed in sections 23-1901 to 23-1913 and any other duties assigned to him or her by the county engineer. The county surveyor shall be a registered land surveyor as provided in the Land Surveyors Regulation Act.

Source: Laws 1879, § 127, p. 386; Laws 1905, c. 50, § 1, p. 295; R.S.1913, § 5685; Laws 1921, c. 141, § 1, p. 606; C.S.1922, § 5015; C.S.1929, § 26-1601; Laws 1939, c. 28, § 16, p. 154; C.S.Supp.,1941, § 26-1601; R.S.1943, § 23-1901; Laws 1969, c. 170, § 1, p. 747; Laws 1982, LB 127, § 2; Laws 1986, LB 512, § 1; Laws 1990, LB 821, § 14; Laws 1994, LB 76, § 543; Laws 1997, LB 622, § 58; Laws 2015, LB138, § 1.
Effective date August 30, 2015.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

Land Surveyors Regulation Act, see section 81-8,108.01.

23-1908 Corners; establishment and restoration; rules governing.

The boundaries of the public lands established by the duly appointed government surveyors, when approved by the Surveyor General and accepted by the government, are unchangeable, and the corners established thereon by them shall be held and considered as the true corners which they were intended to represent, and the restoration of lines and corners of such surveys and the division of sections into their legal subdivisions shall be in accordance with the laws of the United States, the circular of instructions of the United States Department of the Interior, Bureau of Land Management, on the restoration of lost and obliterated section corners and quarter corners, and the circular of instructions to the county surveyors by the State Surveyor under authority of the Board of Educational Lands and Funds. The county surveyor is hereby authorized to restore lost and obliterated corners of original surveys and to establish the subdivisional corners of sections in accordance with the provisions of this section and section 23-1907. Any registered land surveyor registered under the Land Surveyors Regulation Act is hereby authorized to establish any corner not monumented in the original government surveys in accordance with the provisions of this section and section 23-1907. Subdivision shall be executed according to the plan indicated by the original field notes and plats of surveys and governed by the original and legally restored corners. The survey of the subdivisional lines of sections in violation of this section shall be absolutely void.

Source: Laws 1913, c. 43, § 6, p. 143; R.S.1913, § 5692; Laws 1915, c. 102, § 1, p. 245; Laws 1917, c. 109, § 1, p. 280; Laws 1921, c. 161, § 1, p. 654; C.S.1922, § 5022; C.S.1929, § 26-1608; R.S. 1943, § 23-1908; Laws 1969, c. 171, § 1, p. 748; Laws 1982, LB 127, § 5; Laws 2015, LB138, § 2.
Effective date August 30, 2015.

Cross References

Land Surveyors Regulation Act, see section 81-8,108.01.

23-1911 Surveys; records; contents; available to public.

The county surveyor shall record all surveys, for permanent purposes, made by him or her, as required by sections 81-8,121 to 81-8,122.02. Such record shall set forth the names of the persons making the application for the survey, for whom the work was done, and a statement showing it to be an official county survey or resurvey. The official records, other plats, and field notes of the county surveyor's office shall be deemed and considered public records. Any agent or authority of the United States, the State Surveyor or any deputy state surveyor of Nebraska, or any surveyor registered pursuant to the Land Surveyors Regulation Act shall at all times, within reasonable office or business hours, have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in sections 23-1901 to 23-1913. In all counties, where no regular office is maintained in the county courthouse for the county surveyor of that county, the county clerk shall be custodian of the official

record of surveys and all other permanent records pertaining to the office of county surveyor.

Source: Laws 1913, c. 43, § 9, p. 144; R.S.1913, § 5695; C.S.1922; § 5025; C.S.1929, § 26-1611; Laws 1941, c. 44, § 1, p. 227; C.S.Supp.,1941, § 26-1611; R.S.1943, § 23-1911; Laws 1982, LB 127, § 7; Laws 2015, LB138, § 3.
Effective date August 30, 2015.

Cross References

Land Surveyors Regulation Act, see section 81-8,108.01.

ARTICLE 23

COUNTY EMPLOYEES RETIREMENT

Section

- 23-2301. Terms, defined.
- 23-2305.01. Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.
- 23-2306. Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.
- 23-2322. Retirement system; retirement benefits; exemption from legal process; exception.

23-2301 Terms, defined.

For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee’s termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member’s annuity is first effective and shall be the first day of the month following the member’s termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member’s retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges, employees or officers of any county having a population in excess of two hundred fifty thousand inhabitants as determined by the most recent federal decennial census, or, except as provided in section 23-2306, persons making contributions to the School Employees Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable

after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;

(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(21) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(22) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(23) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(24) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(25) Prior service means service prior to the date of adoption of the retirement system;

(26) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(27) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(28) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(29) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(30) Retirement board or board means the Public Employees Retirement Board;

(31) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(32) Retirement system means the Retirement System for Nebraska Counties;

(33) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(34) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(35) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with

the same or another county which qualifies the employee for participation in the plan. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(36) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

Source: Laws 1965, c. 94, § 1, p. 402; Laws 1969, c. 172, § 1, p. 750; Laws 1973, LB 216, § 1; Laws 1974, LB 905, § 1; Laws 1975, LB 47, § 1; Laws 1975, LB 45, § 1; Laws 1984, LB 216, § 2; Laws 1985, LB 347, § 1; Laws 1985, LB 432, § 1; Laws 1986, LB 311, § 2; Laws 1991, LB 549, § 1; Laws 1993, LB 417, § 1; Laws 1994, LB 833, § 1; Laws 1995, LB 369, § 2; Laws 1996, LB 847, § 2; Laws 1996, LB 1076, § 1; Laws 1996, LB 1273, § 14; Laws 1997, LB 624, § 1; Laws 1998, LB 1191, § 23; Laws 1999, LB 703, § 1; Laws 2000, LB 1192, § 1; Laws 2001, LB 142, § 32; Laws 2002, LB 407, § 1; Laws 2002, LB 687, § 3; Laws 2003, LB 451, § 2; Laws 2004, LB 1097, § 2; Laws 2006, LB 366, § 2; Laws 2006, LB 1019, § 1; Laws 2011, LB509, § 2; Laws 2012, LB916, § 4; Laws 2013, LB263, § 2; Laws 2015, LB41, § 2. Effective date August 30, 2015.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2305.01 Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the County Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, credit dividend amounts, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(b) The board shall have the power, through the director of the Nebraska Public Employees Retirement Systems or the director's designee, to make a thorough investigation of any overpayment of a benefit, when in the judgment of the retirement system such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers,

records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Source: Laws 1996, LB 1076, § 5; Laws 2002, LB 687, § 4; Laws 2006, LB 1019, § 2; Laws 2015, LB40, § 4.
Effective date August 30, 2015.

23-2306 Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option to begin participation in the retirement system within the first thirty days of employment, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system within thirty days after taking office. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee of a member county shall be authorized to participate in the retirement system provided for in the County Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4) On and after July 1, 2013, the board may determine that a governmental entity currently participating in the retirement system no longer qualifies under section 414(d) of the Internal Revenue Code as a participating employer in a governmental plan. Upon such determination, affected plan members shall be considered fully vested. The board shall notify such entity within ten days after making a determination. Within ninety days after the board's notice to such entity, affected plan members shall become inactive. The board may adopt and promulgate rules and regulations to carry out this subsection.

(5) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the

Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(6) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(7) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(8) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(9) A full-time or part-time employee of the state who becomes a county employee pursuant to transfer of assessment function to a county shall not be deemed to have experienced a termination of employment and shall receive vesting credit for his or her years of participation in the State Employees Retirement System of the State of Nebraska.

(10) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997, LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3; Laws 2008, LB1147, § 1; Laws 2009, LB188, § 1; Laws 2010, LB950, § 1; Laws 2011, LB509, § 4; Laws 2013, LB263, § 3; Laws 2015, LB261, § 3.
Operative date August 30, 2015.

23-2322 Retirement system; retirement benefits; exemption from legal process; exception.

Annuities or benefits which any person shall be entitled to receive under the County Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that

such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

Source: Laws 1965, c. 94, § 22, p. 409; Laws 1985, LB 347, § 12; Laws 1986, LB 311, § 8; Laws 1989, LB 506, § 1; Laws 1996, LB 1273, § 18; Laws 2012, LB916, § 12; Laws 2015, LB40, § 5.
Effective date August 30, 2015.

Cross References

Spousal Pension Rights Act, see section 42-1101.

ARTICLE 34

PUBLIC DEFENDER

Section

23-3406. Public defender; contract; terms.

23-3408. Public defender; second attorney authorized; when; fees.

23-3406 Public defender; contract; terms.

(1) The contract negotiated between the county board and the contracting attorney shall specify the categories of cases in which the contracting attorney is to provide services.

(2) The contract negotiated between the county board and the contracting attorney shall be awarded for at least a two-year term. Removal of the contracting attorney short of the agreed term may be for good cause only.

(3) The contract between the county board and the contracting attorney may specify a maximum allowable caseload for each full-time or part-time attorney who handles cases under the contract. Caseloads shall allow each lawyer to give every client the time and effort necessary to provide effective representation.

(4) The contract between the county board and the contracting attorney shall provide that the contracting attorney be compensated at a minimum rate which reflects the following factors:

(a) The customary compensation in the community for similar services rendered by a privately retained counsel to a paying client or by government or other publicly paid attorneys to a public client;

(b) The time and labor required to be spent by the attorney; and

(c) The degree of professional ability, skill, and experience called for and exercised in the performance of the services.

(5) The contract between the county board and the contracting attorney shall provide that the contracting attorney may decline to represent clients with no reduction in compensation if the contracting attorney is assigned more cases which require an extraordinary amount of time and preparation than the contracting attorney can competently handle.

(6) The contract between the contracting attorney and the county board shall provide that the contracting attorney shall receive at least ten hours of continuing legal education annually in the area of criminal law. The contract between the county board and the contracting attorney shall provide funds for the continuing legal education of the contracting attorney in the area of criminal law.

(7) The contract between the county board and the contracting attorney shall require that the contracting attorney provide legal counsel to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association and the Canons of Ethics for Attorneys in the State of Nebraska. The contract between the county board and the contracting attorney shall provide that the contracting attorney shall be available to eligible defendants upon their request, or the request of someone acting on their behalf, at any time the Constitution of the United States or the Constitution of Nebraska requires the appointment of counsel.

(8) The contract between the county board and the contracting attorney shall provide for reasonable compensation over and above the normal contract price for cases which require an extraordinary amount of time and preparation.

Source: Laws 1986, LB 885, § 3; R.S.1943, (1989), § 29-1826; Laws 1990, LB 822, § 6; Laws 2015, LB268, § 1.
Effective date August 30, 2015.

23-3408 Public defender; second attorney authorized; when; fees.

In the event that the contracting attorney is appointed to represent an individual charged with a Class IA felony, the contracting attorney shall immediately apply to the district court for appointment of a second attorney to assist in the case. Upon application from the contracting attorney, the district court shall appoint another attorney with substantial felony trial experience to assist the contracting attorney in the case. Application for fees for the attorney appointed by the district court shall be made to the district court judge who shall allow reasonable fees. Once approved by the court, such fees shall be paid by the county board.

Source: Laws 1986, LB 885, § 5; R.S.1943, (1989), § 29-1828; Laws 1990, LB 822, § 8; Laws 2015, LB268, § 2.
Effective date August 30, 2015.

CHAPTER 24 COURTS

Article.

1. Courts of Impeachment. 24-107.
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ARTICLE 1

COURTS OF IMPEACHMENT

Section

- 24-107. Written opinions to be reported; format.

24-107 Written opinions to be reported; format.

The written opinions of any court of impeachment shall be reported in the volume of the Nebraska Reports issued after the adjournments of such court. In the alternative or in addition to print format, such opinions may be published in electronic format in the manner and under such title designated by the Supreme Court.

Source: Laws 1879, § 7, p. 83; R.S.1913, § 1134; C.S.1922, § 1063; C.S.1929, § 27-107; R.S.1943, § 24-107; Laws 1995, LB 271, § 1; Laws 2015, LB301, § 1.
Effective date August 30, 2015.

ARTICLE 2

SUPREME COURT

(a) ORGANIZATION

Section

- 24-201.01. Supreme Court judges; salary; amount; restriction on other employment of judges.
- 24-209. Nebraska Reports; Nebraska Appellate Reports; Nebraska Advance Sheets; Decisions of the Nebraska Court of Appeals; disposition; price; Supreme Court Reports Cash Fund; created.

(b) CLERK AND REPORTER

- 24-212. Nebraska Reports; Nebraska Appellate Reports; preparation and publication; copyright; disposition; annotations.

(k) SUPREME COURT ATTORNEY SERVICES CASH FUND

- 24-231. Supreme Court Attorney Services Cash Fund; created; use; investment.

(a) ORGANIZATION

24-201.01 Supreme Court judges; salary; amount; restriction on other employment of judges.

On July 1, 2014, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred sixty thousand five hundred forty dollars and twenty-five cents. On July 1, 2015, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred sixty-six thousand one hundred fifty-nine dollars and sixteen cents. On July 1, 2016, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred seventy-one thousand nine hundred seventy-four dollars and seventy-three cents.

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

Source: Laws 1947, c. 345, § 1, p. 1089; Laws 1951, c. 58, § 1, p. 191; Laws 1955, c. 77, § 1, p. 231; Laws 1959, c. 93, § 1, p. 406; Laws 1963, c. 127, § 1, p. 480; Laws 1963, c. 534, § 1, p. 1676; Laws 1967, c. 136, § 1, p. 421; Laws 1969, c. 173, § 1, p. 754; Laws 1969, c. 174, § 1, p. 755; Laws 1972, LB 1293, § 2; Laws 1974, LB 923, § 1; Laws 1976, LB 76, § 1; Laws 1978, LB 672, § 1; Laws 1979, LB 398, § 1; Laws 1983, LB 269, § 1; Laws 1986, LB 43, § 1; Laws 1987, LB 564, § 1; Laws 1990, LB 42, § 1; Laws 1995, LB 189, § 1; Laws 1997, LB 362, § 1; Laws 1999, LB 350, § 1; Laws 2001, LB 357, § 1; Laws 2005, LB 348, § 1; Laws 2007, LB377, § 1; Laws 2009, LB414, § 1; Laws 2012, LB862, § 1; Laws 2013, LB306, § 1; Laws 2015, LB663, § 1.
Operative date July 1, 2015.

24-209 Nebraska Reports; Nebraska Appellate Reports; Nebraska Advance Sheets; Decisions of the Nebraska Court of Appeals; disposition; price; Supreme Court Reports Cash Fund; created.

(1) Unless otherwise directed by the Supreme Court, one copy in print format of the Nebraska Reports and one copy in print format of the Nebraska Appellate Reports shall be furnished by the Supreme Court to each judge of the Supreme Court, Court of Appeals, Nebraska Workers' Compensation Court, and district, separate juvenile, and county courts, to each county law library, and to each state library, and two copies of such reports shall be furnished to the Legislative Council. The State Court Administrator shall be furnished as many additional copies in print format as he or she deems necessary for the operation of the Court of Appeals and the Supreme Court.

(2) Unless otherwise directed by the Supreme Court, one copy in print format of the opinions of the Nebraska Supreme Court in pamphlet form, known as the Nebraska Advance Sheets, and one copy in print format of the opinions of the Nebraska Court of Appeals in pamphlet form, known as the Decisions of the Nebraska Court of Appeals, shall be furnished to each judge of the Supreme Court, Court of Appeals, Nebraska Workers' Compensation Court, and district, separate juvenile, and county courts, as many copies as may be requested by the members of the Legislature shall be furnished to the Clerk of the Legislature, and the State Court Administrator shall be furnished as many copies as he

or she deems necessary for the operation of the Court of Appeals and the Supreme Court.

(3) The balance of the Nebraska Reports, Nebraska Appellate Reports, Nebraska Advance Sheets, and Decisions of the Nebraska Court of Appeals shall be sold as called for at such price and in such format as shall be prescribed by the Supreme Court. The money received from such sales shall be paid into the Supreme Court Reports Cash Fund which is hereby created.

(4) Upon request from any office or entity entitled to free copies of the Nebraska Reports, the Nebraska Appellate Reports, the Nebraska Advance Sheets, or the Decisions of the Nebraska Court of Appeals, the court may stop sending the publications to such office or entity until the request is withdrawn.

(5) If it is determined by the Supreme Court, pursuant to subsection (2) of section 24-212, that publication of the opinions of the Supreme Court and the Court of Appeals shall be in electronic format, as an alternative to or in addition to print format, the distribution or sale of such print or electronic opinions for purposes of this section shall be directed by the Supreme Court.

Source: Laws 1879, § 20, p. 86; Laws 1901, c. 24, § 2, p. 330; Laws 1907, c. 41, § 1, p. 179; R.S.1913, § 1147; Laws 1921, c. 213, § 1, p. 752; C.S.1922, § 1076; Laws 1923, c. 129, § 1, p. 322; C.S.1929, § 27-209; Laws 1937, c. 59, § 1, p. 236; C.S.Supp.,1941, § 27-209; R.S.1943, § 24-209; Laws 1947, c. 185, § 3, p. 611; Laws 1957, c. 210, § 1, p. 742; Laws 1961, c. 101, § 1, p. 332; Laws 1961, c. 243, § 1, p. 724; Laws 1963, c. 303, § 1, p. 897; Laws 1963, c. 129, § 1, p. 496; Laws 1971, LB 10, § 1; Laws 1972, LB 1284, § 13; Laws 1977, LB 9, § 1; Laws 1979, LB 377, § 1; Laws 1983, LB 271, § 1; Laws 1984, LB 13, § 5; Laws 1984, LB 848, § 1; Laws 1985, LB 498, § 1; Laws 1986, LB 750, § 1; Laws 1986, LB 811, § 11; Laws 1991, LB 732, § 33; Laws 1992, LB 1059, § 2; Laws 1995, LB 271, § 2; Laws 2002, LB 876, § 4; Laws 2015, LB301, § 2.

Effective date August 30, 2015.

(b) CLERK AND REPORTER

24-212 Nebraska Reports; Nebraska Appellate Reports; preparation and publication; copyright; disposition; annotations.

(1) Except as provided in subsection (2) of this section, it shall be the duty of the Reporter of the Supreme Court and Court of Appeals to prepare the opinions of the courts for publication in advance pamphlet form as fast as they are delivered to him or her, and when sufficient material is accumulated to form a volume of not less than nine hundred pages, he or she shall cause the same to be printed and bound in a permanent manner. The reporter shall also determine, based on the number of current subscribers and the provisions of section 24-209, the number of copies in print format for each publication of advance pamphlets and bound volumes. Payments for such publications shall be made from the Supreme Court Reports Cash Fund. The copyright of each volume shall be entered by the reporter for the benefit of the state, and all papers relating thereto shall be filed and recorded in the office of the Secretary of State. The titles of the volumes shall be the Nebraska Reports and the Nebraska Appellate Reports which with the number of the volume shall be

printed on the back of each volume, and the reports of every case should show the name of the judge writing the opinion, the names of the judges concurring therein, and the names of the judges, if any, dissenting from the opinion. The reporter shall also edit and arrange for publication in the statutes of Nebraska, at such times as the Revisor of Statutes may request, annotations of the decisions of the Supreme Court of Nebraska and the decisions of the Court of Appeals designated for permanent publication and transmit them to the Revisor of Statutes.

(2) In the alternative or in addition to subsection (1) of this section, the opinions of the Supreme Court and Court of Appeals may be published in electronic format in the manner and under such title designated by the Supreme Court.

Source: Laws 1879, § 19, p. 85; Laws 1901, c. 24, § 1, p. 329; R.S.1913, § 1146; C.S.1922, § 1075; Laws 1929, c. 84, § 1, p. 334; C.S. 1929, § 27-212; R.S.1943, § 24-212; Laws 1967, c. 328, § 1, p. 868; Laws 1979, LB 377, § 2; Laws 1984, LB 848, § 2; Laws 1994, LB 1244, § 1; Laws 1995, LB 271, § 4; Laws 2015, LB301, § 3.

Effective date August 30, 2015.

(k) SUPREME COURT ATTORNEY SERVICES CASH FUND

24-231 Supreme Court Attorney Services Cash Fund; created; use; investment.

The Supreme Court Attorney Services Cash Fund is created. The fund shall be under the control of the Supreme Court and administered by the State Court Administrator. The fund shall consist of mandatory assessments and fees, grants, donations, and gifts. The fund shall be used for expenses related to regulation of the practice of law in Nebraska. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Interest earned shall be credited back to the fund.

Source: Laws 2015, LB194, § 1.

Effective date August 30, 2015.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**ARTICLE 5
COUNTY COURT**

(a) ORGANIZATION

Section

24-517. Jurisdiction.

(a) ORGANIZATION

24-517 Jurisdiction.

Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of section 30-2464 and section 30-2486;

(2) Exclusive original jurisdiction in all matters relating to the guardianship of a person, except if a separate juvenile court already has jurisdiction over a child in need of a guardian, concurrent original jurisdiction with the separate juvenile court in such guardianship;

(3) Exclusive original jurisdiction of all matters relating to conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(4) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(5) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court pursuant to subdivision (b) of this subdivision on and after July 1, 2005.

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An award of the county court which is greater than the jurisdictional amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

(b) The Supreme Court shall adjust the jurisdictional amount for the county court every fifth year commencing July 1, 2005. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The jurisdictional amount shall be rounded to the nearest one-thousand-dollar amount;

(6) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction. The district court shall have concurrent original jurisdiction in any criminal matter classified as a misdemeanor that arises from the same incident as a charged felony;

(7) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 25-2740 and with the district court and separate juvenile court in paternity or custody determinations as provided in section 25-2740;

(8) Concurrent original jurisdiction with the district court in matters arising under the Nebraska Uniform Trust Code;

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance, except with respect to violations committed by persons under eighteen years of age;

(10) The jurisdiction of a juvenile court as provided in the Nebraska Juvenile Code when sitting as a juvenile court in counties which have not established separate juvenile courts;

(11) Exclusive original jurisdiction in matters of adoption, except if a separate juvenile court already has jurisdiction over the child to be adopted, concurrent original jurisdiction with the separate juvenile court;

(12) Exclusive original jurisdiction in matters arising under the Nebraska Uniform Custodial Trust Act;

(13) Concurrent original jurisdiction with the district court in any matter relating to a power of attorney and the action or inaction of any agent acting under a power of attorney;

(14) Exclusive original jurisdiction in any action arising under sections 30-3401 to 30-3432;

(15) Exclusive original jurisdiction in matters arising under the Nebraska Uniform Transfers to Minors Act;

(16) Concurrent original jurisdiction with the district court in matters arising under the Uniform Principal and Income Act;

(17) Concurrent original jurisdiction with the district court in matters arising under the Uniform Testamentary Additions to Trusts Act (1991) except as otherwise provided in subdivision (1) of this section; and

(18) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Source: Laws 1972, LB 1032, § 17; Laws 1973, LB 226, § 6; Laws 1977, LB 96, § 1; Laws 1979, LB 373, § 1; Laws 1983, LB 137, § 1; Laws 1984, LB 13, § 12; Laws 1986, LB 529, § 7; Laws 1986, LB 1229, § 1; Laws 1991, LB 422, § 1; Laws 1996, LB 1296, § 2; Laws 1997, LB 229, § 1; Laws 1998, LB 1041, § 1; Laws 2001, LB 269, § 1; Laws 2003, LB 130, § 114; Laws 2005, LB 361, § 29; Laws 2008, LB280, § 1; Laws 2008, LB1014, § 4; Laws 2009, LB35, § 5; Laws 2014, LB464, § 2; Laws 2015, LB314, § 1.

Effective date August 30, 2015.

Cross References

- Nebraska Juvenile Code, see section 43-2,129.
- Nebraska Uniform Custodial Trust Act, see section 30-3501.
- Nebraska Uniform Transfers to Minors Act, see section 43-2701.
- Nebraska Uniform Trust Code, see section 30-3801.
- Uniform Principal and Income Act, see section 30-3116.
- Uniform Testamentary Additions to Trusts Act (1991), see section 30-3601.

**ARTICLE 7
JUDGES, GENERAL PROVISIONS**

(a) JUDGES RETIREMENT

- Section
- 24-701. Terms, defined.
 - 24-701.01. Act, how cited.
 - 24-703. Judges; contributions; payment; funding of system; late fees.
 - 24-704.01. Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.

Section

- 24-710.02. Retirement benefits; exemption from legal process; exception.
- 24-710.13. Judges who became members prior to July 1, 2015; annual benefit adjustment; cost-of-living adjustment calculation method.
- 24-710.14. Judges who became members on or after July 1, 2015; annual benefit adjustment.
- 24-710.15. Judges who became members on and after July 1, 2015; cost-of-living adjustment.

(a) JUDGES RETIREMENT

24-701 Terms, defined.

For purposes of the Judges Retirement Act, unless the context otherwise requires:

- (1) Fund means the Nebraska Retirement Fund for Judges;
- (2) Judge means and includes (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who serve in such capacity on and after January 3, 1957, (b)(i) all duly appointed judges of the Nebraska Workmen’s Compensation Court who served in such capacity on and after September 20, 1957, and prior to July 17, 1986, and (ii) judges of the Nebraska Workers’ Compensation Court who serve in such capacity on and after July 17, 1986, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties who serve in such capacity on and after January 5, 1961, (e) judges of the county court and clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates, (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985, and (g) judges of the Court of Appeals;
- (3) Prior service means all the periods of time any person has served as a (a) judge of the Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen’s Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;
- (4)(a) Current service means the period of service (i) any judge of the Supreme Court or judge of the district court serves in such capacity from and after January 3, 1957, (ii)(A) any judge of the Nebraska Workmen’s Compensation Court served in such capacity from and after September 20, 1957, and prior to July 17, 1986, and (B) any judge of the Nebraska Workers’ Compensation Court serves in such capacity on and after July 17, 1986, (iii) any county judge serves in such capacity from and after January 5, 1961, (iv) any judge of a separate juvenile court serves in such capacity, (v) any judge of the municipal court served in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, (vi) any judge of the county court or associate county judge serves in such capacity subsequent to January 4, 1973, (vii) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, serves in such capacity from and after July 1, 1986, and (viii) any judge of the Court of Appeals serves in such capacity on or after September 6, 1991.

(b) Current service shall not be deemed to be interrupted by (i) temporary or seasonal suspension of service that does not terminate the employee’s employ-

ment, (ii) leave of absence authorized by the employer for a period not exceeding twelve months, (iii) leave of absence because of disability, or (iv) military service, when properly authorized by the board. Current service does not include any period of disability for which disability retirement benefits are received under section 24-709;

(5) Military service means active service of (a) any judge of the Supreme Court or judge of the district court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 18, 1955, if such service commenced while such judge was holding the office of judge, (b) any judge of the Nebraska Workmen's Compensation Court or the Nebraska Workers' Compensation Court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 20, 1957, if such service commenced while such judge was holding the office of judge, (c) any judge of the municipal court in any of the armed forces of the United States during a war or national emergency prior or subsequent to October 23, 1967, and prior to July 1, 1985, if such service commenced while such judge was holding the office of judge, (d) any judge of the county court or associate county judge in any of the armed forces of the United States during a war or national emergency prior or subsequent to January 4, 1973, if such service commenced while such judge was holding the office of judge, (e) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, in any of the armed forces of the United States during a war or national emergency on or after July 1, 1986, if such service commenced while such clerk magistrate was holding the office of clerk magistrate, and (f) any judge of the Court of Appeals in any of the armed forces of the United States during a war or national emergency on or after September 6, 1991, if such service commenced while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision;

(6) Creditable service means the total number of years served as a judge, including prior service, military service, and current service, computed to the nearest one-twelfth year. For current service prior to the time that the member has contributed the required percentage of salary until the maximum benefit as limited by section 24-710 has been earned, creditable service does not include current service for which member contributions are not made or are withdrawn and not repaid;

(7)(a) Compensation means the statutory salary of a judge or the salary being received by such judge pursuant to law. Compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded.

For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(8) Beneficiary means a person so designated by a judge in the last designation of beneficiary on file with the board or, if no designated person survives or if no designation is on file, the estate of such judge;

(9) Normal form annuity means a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge as provided in sections 24-707 and 24-710, except as provided in section 42-1107. The first payment shall include all amounts accrued since the effective date of the award of the annuity. The last payment shall be at the end of the calendar month in which such judge dies. If at the time of death the amount of annuity payments such judge has received is less than contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate;

(10) Board means the Public Employees Retirement Board;

(11) Member means a judge eligible to participate in the retirement system established under the Judges Retirement Act;

(12) Original member means a judge who first served as a judge prior to December 25, 1969, who does not elect to become a future member pursuant to subsection (8) of section 24-703 or section 24-710.01, and who was retired on or before December 31, 1992;

(13) Future member means a judge who first served as a judge on or after December 25, 1969, or means a judge who first served as a judge prior to December 25, 1969, who elects to become a future member on or before June 30, 1970, as provided in subsection (8) of section 24-703 or section 24-710.01;

(14) Final average compensation for a judge who becomes a member prior to July 1, 2015, means the average monthly compensation for the three twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than three twelve-month periods, the average monthly compensation for such judge's period of service. Final average compensation for a judge who becomes a member on and after July 1, 2015, means the average monthly compensation for the five twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than five twelve-month periods, the average monthly compensation for such judge's period of service;

(15) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(16) Normal retirement date means the first day of the month following attainment of age sixty-five;

(17) Actuarial equivalence means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations are to be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations;

(18) Current benefit means the initial benefit increased by all adjustments made pursuant to the Judges Retirement Act;

(19) Initial benefit means the retirement benefit calculated at the time of retirement;

(20) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(21) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(22) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(23) Retirement system or system means the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(24) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under the qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(25) Termination of employment occurs on the date on which the State Court Administrator's office determines that the judge's employer-employee relationship with the State of Nebraska is dissolved. The State Court Administrator's office shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment as a judge if the judge returns to regular employment as a judge or is employed on a regular basis by another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the judge's employer-employee relationship ceased and the date when the employer-employee relationship recommences. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 24-710, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

Source: Laws 1955, c. 83, § 1, p. 244; Laws 1957, c. 78, § 1, p. 315; Laws 1957, c. 79, § 1, p. 318; Laws 1959, c. 95, § 1, p. 409; Laws 1959, c. 189, § 13, p. 687; Laws 1965, c. 115, § 1, p. 440; Laws 1969, c. 178, § 1, p. 759; Laws 1971, LB 987, § 4; Laws 1972, LB 1032, § 120; Laws 1973, LB 226, § 10; Laws 1974, LB 905, § 3; Laws 1983, LB 223, § 1; Laws 1984, LB 13, § 32; Laws 1984, LB 750,

§ 1; Laws 1986, LB 92, § 1; Laws 1986, LB 311, § 9; Laws 1986, LB 351, § 1; Laws 1986, LB 529, § 17; Laws 1986, LB 811, § 12; Laws 1989, LB 506, § 2; Laws 1991, LB 549, § 15; Laws 1991, LB 732, § 36; Laws 1992, LB 682, § 1; Laws 1994, LB 833, § 12; Laws 1996, LB 700, § 1; Laws 1996, LB 847, § 11; Laws 1996, LB 1076, § 8; Laws 1996, LB 1273, § 19; Laws 1997, LB 624, § 9; Laws 1999, LB 674, § 1; Laws 2000, LB 1192, § 4; Laws 2001, LB 408, § 6; Laws 2003, LB 451, § 14; Laws 2011, LB6, § 1; Laws 2012, LB916, § 14; Laws 2013, LB263, § 10; Laws 2015, LB468, § 1.

Effective date May 30, 2015.

Cross References

Spousal Pension Rights Act, see section 42-1101.

24-701.01 Act, how cited.

Sections 24-701 to 24-714 shall be known and may be cited as the Judges Retirement Act.

Source: Laws 1996, LB 847, § 12; Laws 1997, LB 624, § 10; Laws 1998, LB 532, § 1; Laws 1998, LB 1191, § 36; Laws 2001, LB 408, § 7; Laws 2002, LB 407, § 11; Laws 2004, LB 1097, § 10; Laws 2010, LB950, § 8; Laws 2011, LB509, § 9; Laws 2015, LB468, § 2.
Effective date May 30, 2015.

24-703 Judges; contributions; payment; funding of system; late fees.

(1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (10) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2)(a) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, each future member who became a member prior to July 1, 2015, and who has not elected to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. After the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such future member shall make no further contributions to the fund, except that (i) any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change

shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned and (ii) such future member shall continue to make the contribution required under subdivision (c) of this subsection.

(b) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, a judge who became a member prior to July 1, 2015, and who first serves as a judge on or after July 1, 2004, or a future member who became a member prior to July 1, 2015, and who elects to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited by subsection (2) of section 24-710 has been earned. In addition to the contribution required under subdivision (c) of this subsection, after the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such judge or future member shall contribute monthly four percent of his or her monthly compensation to the fund for the remainder of his or her active service.

(c) Beginning on July 1, 2009, a member or judge described in subdivisions (a) and (b) of this subsection shall contribute monthly an additional one percent of his or her monthly compensation to the fund.

(d) Beginning on July 1, 2015, a judge who first serves as a judge on or after such date shall contribute monthly ten percent of his or her monthly compensation to the fund.

(e) It shall be the duty of the Director of Administrative Services to make a deduction on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3) Except as otherwise provided in this subsection, a Nebraska Retirement Fund for Judges fee of six dollars shall be taxed as costs in each (a) civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts, the county courts, and the separate juvenile courts, (b) filing in the district court of an order, award, or judgment of the Nebraska Workers' Compensation Court or any judge thereof pursuant to section 48-188, (c) appeal or other proceeding filed in the Court of Appeals, and (d) original action, appeal, or other proceeding filed in the Supreme Court. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06, rounded to the nearest even dollar. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06. When collected by the clerk of the district or county court, such fees shall be paid and information submitted to the director in charge of the judges retirement system on forms prescribed by the board by the clerk within ten days after the close of

each calendar quarter. The board may charge a late administrative processing fee not to exceed twenty-five dollars if the information is not timely received or the money is delinquent. In addition, the board may charge a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received. Such director shall promptly thereafter remit the same to the State Treasurer for credit to the fund. No Nebraska Retirement Fund for Judges fee which is uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits and for the expenses of administration.

(5) The fund shall consist of the total fund as of December 25, 1969, the contributions of members as provided in this section, all supplementary court fees as provided in subsection (3) of this section, and any required contributions of the state.

(6) Not later than January 1 of each year, the State Treasurer shall transfer to the fund the amount certified by the board as being necessary to pay the cost of any benefits accrued during the fiscal year ending the previous June 30 in excess of member contributions for that fiscal year and court fees as provided in subsection (3) of this section and fees pursuant to sections 25-2804, 33-103, 33-103.01, 33-106, 33-106.02, 33-123, 33-125, 33-126.02, 33-126.03, and 33-126.06 and directed to be remitted to the fund, if any, for that fiscal year plus any required contributions of the state as provided in subsection (9) of this section.

(7) Benefits under the retirement system to members or to their beneficiaries shall be paid from the fund.

(8) Any member who is making contributions to the fund on December 25, 1969, may, on or before June 30, 1970, elect to become a future member by delivering written notice of such election to the board.

(9) Not later than January 1 of each year, the State Treasurer shall transfer to the fund an amount, determined on the basis of an actuarial valuation as of the previous June 30 and certified by the board, to fully fund the unfunded accrued liabilities of the retirement system as of June 30, 1988, by level payments up to January 1, 2000. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. For the fiscal year beginning July 1, 2013, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level percentage of salary basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry

age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Judges Retirement Act.

(10) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the member until such time as they are distributed or made available. The contributions, although designated as member contributions, shall be paid by the state or county in lieu of member contributions. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compensation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Source: Laws 1955, c. 83, § 3, p. 246; Laws 1957, c. 79, § 2, p. 321; Laws 1959, c. 95, § 2, p. 411; Laws 1959, c. 189, § 14, p. 689; Laws 1963, c. 137, § 1, p. 513; Laws 1965, c. 115, § 2, p. 442; Laws 1965, c. 116, § 2, p. 446; Laws 1967, c. 140, § 1, p. 428; Laws 1969, c. 178, § 2, p. 957; Laws 1971, LB 987, § 5; Laws 1972, LB 1032, § 121; Laws 1972, LB 1471, § 1; Laws 1973, LB 226, § 11; Laws 1974, LB 228, § 1; Laws 1977, LB 344, § 2; Laws 1977, LB 467, § 1; Laws 1981, LB 459, § 3; Laws 1984, LB 13, § 33; Laws 1984, LB 218, § 2; Laws 1986, LB 92, § 2; Laws 1986, LB 529, § 18; Laws 1989, LB 233, § 1; Laws 1989, LB 506, § 3; Laws 1991, LB 549, § 16; Laws 1991, LB 732, § 37; Laws 1992, LB 672, § 31; Laws 1992, LB 682, § 2; Laws 1994, LB 833, § 14; Laws 1995, LB 574, § 34; Laws 2001, LB 408, § 9; Laws 2002, LB 407, § 13; Laws 2003, LB 320, § 1; Laws 2003, LB 760, § 4; Laws 2004, LB 1097, § 11; Laws 2005, LB 348, § 2; Laws 2005, LB 364, § 7; Laws 2006, LB 1019, § 5; Laws 2009, LB414, § 2; Laws 2013, LB263, § 11; Laws 2013, LB306, § 2; Laws 2013, LB553, § 1; Laws 2015, LB468, § 3.
Effective date May 30, 2015.

24-704.01 Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the Judges Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the

prior overpayment, together with regular interest thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(b) The board shall have the power, through the director of the Nebraska Public Employees Retirement Systems or the director's designee, to make a thorough investigation of any overpayment of a benefit, when in the judgment of the retirement system such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Source: Laws 1996, LB 1076, § 10; Laws 2004, LB 1097, § 12; Laws 2015, LB40, § 6.
Effective date August 30, 2015.

24-710.02 Retirement benefits; exemption from legal process; exception.

All annuities or benefits which any person shall be entitled to receive under the Judges Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

Source: Laws 1986, LB 311, § 12; Laws 1989, LB 506, § 8; Laws 1994, LB 833, § 23; Laws 1995, LB 574, § 37; Laws 1996, LB 1273, § 22; Laws 2004, LB 1097, § 16; Laws 2012, LB916, § 16; Laws 2015, LB40, § 7.
Effective date August 30, 2015.

Cross References

Spousal Pension Rights Act, see section 42-1101.

24-710.13 Judges who became members prior to July 1, 2015; annual benefit adjustment; cost-of-living adjustment calculation method.

On July 1 of each year, for judges who became members prior to July 1, 2015:

(1) The board shall determine the number of retired members or beneficiaries in the retirement system who became members prior to July 1, 2015, and an annual benefit adjustment shall be made by the board for each retired member

or beneficiary under one of the cost-of-living adjustment calculation methods found in subdivision (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that provides the retired member or beneficiary the greatest annual benefit adjustment increase. No retired member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section;

(2) The current benefit paid to a retired member or beneficiary under this subdivision shall be adjusted so that the purchasing power of the benefit being paid is not less than seventy-five percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by seventy-five percent. In any year in which applying the adjustment provided in subdivision (3) of this section results in a benefit which would be less than seventy-five percent of the purchasing power of the initial benefit as calculated in this subdivision, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year;

(3) The current benefit paid to a retired member or beneficiary under this subdivision shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) two and one-half percent;

(4)(a) The current benefit paid to a retired member or beneficiary under this subdivision shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method provided in this subdivision, the retired member or beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 24-709, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 24-707 or 24-707.01 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by this subdivision.

(c) The monthly accrual rate under this subdivision is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under this subdivision is the total benefit received by a retired member or beneficiary pursuant to the Judges Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) The board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate;

(5) On July 1 of each year, each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first;

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires; and

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees.

Source: Laws 2011, LB509, § 10; Laws 2013, LB263, § 12; Laws 2013, LB306, § 3; Laws 2015, LB468, § 4.
Effective date May 30, 2015.

24-710.14 Judges who became members on or after July 1, 2015; annual benefit adjustment.

On July 1 of each year, for judges who became members on or after July 1, 2015:

(1) The board shall determine the number of retired members or beneficiaries in the retirement system who became members on or after July 1, 2015, and an annual benefit adjustment shall be made by the board for each retired member or beneficiary. The benefit paid to a retired member or beneficiary under this section shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) one percent. If the consumer price index used in this section is discontinued

or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees;

(2) Each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first; and

(3) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

Source: Laws 2015, LB468, § 5.
Effective date May 30, 2015.

24-710.15 Judges who became members on and after July 1, 2015; cost-of-living adjustment.

(1) Beginning July 1, 2015, for judges who become members on and after July 1, 2015, if the annual valuation made by the actuary, as approved by the board, indicates that the system is fully funded and has sufficient actuarial surplus to provide for a supplemental lump-sum cost-of-living adjustment, the board may, in its discretion, elect to pay a maximum one and one-half percent supplemental lump-sum cost-of-living adjustment to each retired member or beneficiary based on the retired member's or beneficiary's total monthly benefit through June 30 of the year for which the supplemental lump-sum cost-of-living adjustment is being calculated. The supplemental lump-sum cost-of-living payment shall be paid within sixty days after the board's decision. In no event shall the board declare a supplemental lump-sum cost-of-living adjustment if such adjustment would cause the plan to be less than fully funded.

(2) For purposes of this section, fully funded means the unfunded actuarial accrued liability, based on the lesser of the actuarial value and the market value, under the entry age actuarial cost method is less than zero on the most recent actuarial valuation date.

(3) Any decision or determination by the board to declare or not declare a cost-of-living adjustment or as to whether the annual valuation indicates a sufficient actuarial surplus to provide for a cost-of-living adjustment shall be made in the sole, absolute, and final discretion of the board and shall not be subject to challenge by any member or beneficiary. In no event shall the Legislature be constrained or limited in amending the system notwithstanding the effect of any such change upon the actuarial surplus of the system and the ability of the board to declare future cost-of-living adjustments.

Source: Laws 2015, LB468, § 6.
Effective date May 30, 2015.

ARTICLE 11
COURT OF APPEALS

Section

24-1105. Repealed. Laws 2015, LB 268, § 35.

24-1106. Jurisdiction; direct review by Supreme Court; when; removal of case.

24-1105 Repealed. Laws 2015, LB 268, § 35.**24-1106 Jurisdiction; direct review by Supreme Court; when; removal of case.**

(1) In cases which were appealable to the Supreme Court before September 6, 1991, the appeal, if taken, shall be to the Court of Appeals except in cases in which life imprisonment has been imposed and cases involving the constitutionality of a statute.

(2) Any party to a case appealed to the Court of Appeals may file a petition in the Supreme Court to bypass the review by the Court of Appeals and for direct review by the Supreme Court. The procedure and time for filing the petition shall be as provided by rules of the Supreme Court. In deciding whether to grant the petition, the Supreme Court may consider one or more of the following factors:

(a) Whether the case involves a question of first impression or presents a novel legal question;

(b) Whether the case involves a question of state or federal constitutional interpretation;

(c) Whether the case raises a question of law regarding the validity of a statute;

(d) Whether the case involves issues upon which there is an inconsistency in the decisions of the Court of Appeals or of the Supreme Court; and

(e) Whether the case is one of significant public interest.

When a petition for direct review is granted, the case shall be docketed for hearing before the Supreme Court.

(3) The Supreme Court shall by rule provide for the removal of a case from the Court of Appeals to the Supreme Court for decision by the Supreme Court at any time before a final decision has been made on the case by the Court of Appeals. The removal may be on the recommendation of the Court of Appeals or on motion of the Supreme Court. Cases may be removed from the Court of Appeals for decision by the Supreme Court for any one or more of the reasons set forth in subsection (2) of this section or in order to regulate the caseload existing in either the Court of Appeals or the Supreme Court. The Chief Judge of the Court of Appeals and the Chief Justice of the Supreme Court shall regularly inform each other of the number and nature of cases docketed in the respective court.

Source: Laws 1991, LB 732, § 6; Laws 2015, LB268, § 3.

Effective date August 30, 2015.



CHAPTER 25

COURTS; CIVIL PROCEDURE

Article.

10. Provisional Remedies.
 (a) Attachment and Garnishment. 25-1010.
 (b) Garnishment in Aid of Execution. 25-1056.
11. Trial.
 (f) Exceptions. 25-1140.09.
21. Actions and Proceedings in Particular Cases.
 (e) Foreclosure of Mortgages. 25-2142.
 (qq) Human Trafficking Victims Civil Remedy Act. 25-21,297 to 25-21,301.
 (rr) Human Trafficking Civil Forfeiture. 25-21,302.

ARTICLE 10

PROVISIONAL REMEDIES

(a) ATTACHMENT AND GARNISHMENT

Section

25-1010. Attachment; garnishment; affidavit; summons; answer; duties of garnishee; written interrogatories; financial institution; service of process; designated location; Department of Banking and Finance; immunity.

(b) GARNISHMENT IN AID OF EXECUTION

25-1056. Garnishment in aid of execution; when issued; procedure; continuing lien; when invalid; priority; financial institution; service of process; designated location; Department of Banking and Finance; immunity.

(a) ATTACHMENT AND GARNISHMENT

25-1010 Attachment; garnishment; affidavit; summons; answer; duties of garnishee; written interrogatories; financial institution; service of process; designated location; Department of Banking and Finance; immunity.

(1) When an affidavit is filed in a civil action containing the necessary allegations of an affidavit of attachment and in addition allegations that the affiant has good reason to and does believe that any person, partnership, limited liability company, or corporation to be named has property of and is indebted to the defendant, describing such property, in his or her possession that cannot be levied upon by attachment, a judge of any district court or county court may direct the clerk to issue a summons and order requiring such person, partnership, limited liability company, or corporation as garnishee to answer written interrogatories, to be furnished by the plaintiff and attached to such summons and order, respecting the matters set forth in section 25-1026. All answers must be given in writing but do not need to be verified or given under oath. All answers so given will be deemed to be true and subject to all of the penalties of perjury in the event of willful falsification.

(2) The summons and order referred to in subsection (1) of this section shall be returnable within five days from the date of the issuance thereof and shall require the garnishee to answer within ten days from the date of service upon him or her. The order shall inform the garnishee (a) of the penalties that may

be imposed in the event of willful falsification, (b) that he or she is obligated to hold the property of every description and the credits of the defendant in his or her possession or under his or her control at the time of the service of the order and the interrogatories until further direction from the court, (c) of his or her ability to obtain discharge from liability to the defendant under section 25-1027, and (d) of the ability of the court to enter judgment against him or her upon failure to answer the interrogatories as provided in section 25-1028. If the answers to the interrogatories identify property of the defendant in the possession of the garnishee, the clerk shall mail to the last-known address of the defendant copies of the garnishment summons and answers to interrogatories within five days after the return of the answers to the interrogatories.

(3) Prior to final judgment in an action, no order of garnishment shall issue for wages due from an employer to an employee.

(4)(a) In any case involving service of a garnishment summons on a financial institution where deposits are received within this state, the financial institution shall (i) if its main chartered office is located in this state, designate its main chartered office for the service of summons or (ii) if its main chartered office is located in another state, designate any one of its offices or branches or its agent for service of process in this state for service of summons. The designation of a main chartered office or an office or branch or the agent for service of process under this subdivision shall be made by filing a notice of designation with the Department of Banking and Finance, shall contain the physical address of the main chartered office or the office or branch or the agent for service of process designated, and shall be effective upon placement on the department web site. The department shall post the list of such designated main chartered offices and offices or branches or agents for service of process on its web site for access by the public. A financial institution may modify or revoke a designation made under this subdivision by filing the modification or revocation with the department. The modification or revocation shall be effective when the department's web site has been updated to reflect the modification or revocation, except that the judgment creditor may rely upon the designation that was modified or revoked during the thirty-day period following the effective date of the modification or revocation if the summons is timely served upon the financial institution. The department shall update its web site to reflect a filing by a financial institution pursuant to this subdivision or a modification or revocation filed by a financial institution pursuant to this subdivision within ten business days following the filing by the financial institution. The department web site shall reflect the date its online records for each financial institution have most recently been updated.

(b) If a financial institution where deposits are received has designated its main chartered office or one of its offices or branches or its agent for service of process for the service of summons, service made on the main chartered office or the office or branch or the agent for service of process so designated shall be valid and effective as to any property or credits of the defendant in the possession or control of the main chartered office of the financial institution in this state and any of the financial institution offices or branches located within this state. If service of summons is not made on the main chartered office or the office or branch or the agent for service of process designated by the financial institution, but instead is made at another office or branch of the financial institution located in Nebraska, the financial institution, in its discretion, and without violating any obligation to its customer, may elect to treat the service of

summons as valid and effective as to any property or credits of the defendant in the possession or control of the main chartered office of the financial institution in this state and any of the financial institution offices or branches located within this state. In the absence of such an election, the financial institution shall file a statement with the interrogatories that the summons was not served at the financial institution's designated location for receiving service of summons and, therefore, was not processed, and shall provide the address at which the financial institution is to receive service of summons.

(c) For purposes of this subsection, financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union whether chartered by the United States, the Department of Banking and Finance, or a foreign state agency.

(d) The notice of designation, modification, or revocation shall be made by a financial institution on forms prescribed by the department.

(e) The Department of Banking and Finance, any employee of the department, or any person acting on behalf of the department shall be immune from civil and criminal liability for any acts or omissions which occur as a result of the requirements of this subsection.

Source: R.S.1867, Code § 207, p. 427; R.S.1913, § 7741; C.S.1922, § 8685; C.S.1929, § 20-1010; R.S.1943, § 25-1010; Laws 1951, c. 67, § 1, p. 202; Laws 1955, c. 85, § 1, p. 254; Laws 1959, c. 101, § 1, p. 422; Laws 1971, LB 834, § 1; Laws 1980, LB 597, § 6; Laws 1984, LB 13, § 37; Laws 1991, LB 732, § 43; Laws 1993, LB 121, § 168; Laws 2015, LB195, § 1.
Operative date January 1, 2016.

(b) GARNISHMENT IN AID OF EXECUTION

25-1056 Garnishment in aid of execution; when issued; procedure; continuing lien; when invalid; priority; financial institution; service of process; designated location; Department of Banking and Finance; immunity.

(1) In all cases when a judgment has been entered by any court of record and the judgment creditor or his or her agent or attorney has filed an affidavit setting forth the amount due on the judgment, interest, and costs in the office of the clerk of the court where the judgment has been entered and that he or she has good reason to and does believe that any person, partnership, limited liability company, or corporation, naming him, her, or it, has property of and is indebted to the judgment debtor, the clerk shall issue a summons which shall set forth the amount due on the judgment, interest, and costs as shown in the affidavit and require such person, partnership, limited liability company, or corporation, as garnishee, to answer written interrogatories to be furnished by the plaintiff and to be attached to such summons respecting the matters set forth in section 25-1026. The summons shall be returnable within ten days from the date of its issuance and shall require the garnishee to answer within ten days from the date of service upon him or her. Except when wages are involved, the garnishee shall hold the property of every description and the credits of the defendant in his or her possession or under his or her control at the time of the service of the summons and interrogatories until the further order of the court. If the only property in the possession or under the control of the garnishee at the time of the service of the summons and interrogatories is

credits of the defendant and the amount of such credits is not in dispute by the garnishee, then such garnishee shall only hold the credits of the defendant in his or her possession or under his or her control at the time of the service of the summons and interrogatories to the extent of the amount of the judgment, interest, and costs set forth in the summons until further order of the court. When wages are involved, the garnishee shall pay to the employee all disposable earnings exempted from garnishment by statute, and any disposable earnings remaining after such payment shall be retained by the garnishee until further order of the court. Thereafter, the service of the summons and interrogatories and all further proceedings shall be in all respects the same as is provided for in sections 25-1011 and 25-1026 to 25-1031.01 unless inconsistent with this section.

(2) If it appears from the answer of the garnishee that the judgment debtor was an employee of the garnishee, that the garnishee otherwise owed earnings to the judgment debtor when the garnishment order was served, or that earnings would be owed within sixty days thereafter and there is not a successful written objection to the order or the answer of the garnishee filed, on application by the judgment creditor, the court shall order that the nonexempt earnings, if any, withheld by the garnishee after service of the order be transferred to the court for delivery to the judgment creditor who is entitled to such earnings. Except for garnishments in support of a person, the payments may be made payable to the judgment creditor or assignee and shall be forwarded to the issuing court to record the judgment payment prior to the court delivering the payment to the judgment creditor or assignee. The court shall, upon application of the judgment creditor, further order that the garnishment is a continuing lien against the nonexempt earnings of the judgment debtor. An order of continuing lien on nonexempt earnings entered pursuant to this section shall require the garnishee to continue to withhold the nonexempt earnings of the judgment debtor for as long as the continuing lien remains in effect.

Beginning with the pay period during which the writ was served and while the continuing lien remains in effect, the garnishee shall deliver the nonexempt earnings to the court from which the garnishment was issued for each pay period or on a monthly basis if the garnishee so desires and shall deliver to the judgment debtor his or her exempt earnings for each pay period.

(3) A continuing lien ordered pursuant to this section shall be invalid and shall have no force and effect upon the occurrence of any of the following:

- (a) The underlying judgment is satisfied in full or vacated or expires;
- (b) The judgment debtor leaves the garnishee's employ for more than sixty days;
- (c) The judgment creditor releases the garnishment;
- (d) The proceedings are stayed by a court of competent jurisdiction, including the United States Bankruptcy Court;
- (e) The judgment debtor has not earned any nonexempt earnings for at least sixty days;
- (f) The court orders that the garnishment be quashed; or
- (g) Ninety days have expired since service of the writ. The judgment creditor may extend the lien for a second ninety-day period by filing with the court a notice of extension during the fifteen days immediately prior to the expiration

of the initial lien, and the continuing lien in favor of the initial judgment creditor shall continue for a second ninety-day period.

(4)(a) To determine priority, garnishments and liens shall rank according to time of service.

(b) Garnishments, liens, and wage assignments which are not for the support of a person shall be inferior to wage assignments for the support of a person. Garnishments which are not for the support of a person and liens shall be inferior to garnishments for the support of a person.

(5) Only one order of continuing lien against earnings due the judgment debtor shall be in effect at one time. If an employee's wages are already being garnished pursuant to a continuing lien at the time of service of a garnishment upon an employer, the answer to garnishment interrogatories shall include such information along with the date of termination of such continuing lien and the title of the case from which such garnishment is issued. Except as provided in subsection (4) of this section, a continuing lien obtained pursuant to this section shall have priority over any subsequent garnishment or wage assignment.

(6)(a) In any case involving service of a garnishment summons on a financial institution where deposits are received within this state, the financial institution shall (i) if its main chartered office is located in this state, designate its main chartered office for the service of summons or (ii) if its main chartered office is located in another state, designate any one of its offices or branches or its agent for service of process in this state for service of summons. The designation of a main chartered office or an office or branch or the agent for service of process under this subdivision shall be made by filing a notice of designation with the Department of Banking and Finance, shall contain the physical address of the main chartered office or the office or branch or the agent for service of process designated, and shall be effective upon placement on the department web site. The department shall post the list of such designated main chartered offices and offices or branches or agents for service of process on its web site for access by the public. A financial institution may modify or revoke a designation made under this subdivision by filing the modification or revocation with the department. The modification or revocation shall be effective when the department's web site has been updated to reflect the modification or revocation, except that the judgment creditor may rely upon the designation that was modified or revoked during the thirty-day period following the effective date of the modification or revocation if the summons is timely served upon the financial institution. The department shall update its web site to reflect a filing by a financial institution pursuant to this subdivision or a modification or revocation filed by a financial institution pursuant to this subdivision within ten business days following the filing by the financial institution. The department web site shall reflect the date its online records for each financial institution have most recently been updated.

(b) If a financial institution where deposits are received has designated its main chartered office or one of its offices or branches or its agent for service of process for the service of summons, service made on the main chartered office or the office or branch or the agent for service of process so designated shall be valid and effective as to any property or credits of the defendant in the possession or control of the main chartered office of the financial institution in this state and any of the financial institution offices or branches located within

this state. If service of summons is not made on the main chartered office or the office or branch or the agent for service of process designated by the financial institution, but instead is made at another office or branch of the financial institution located in Nebraska, the financial institution, in its discretion, and without violating any obligation to its customer, may elect to treat the service of summons as valid and effective as to any property or credits of the defendant in the possession or control of the main chartered office of the financial institution in this state and any of the financial institution offices or branches located within this state. In the absence of such an election, the financial institution shall file a statement with the interrogatories that the summons was not served at the financial institution's designated location for receiving service of summons and, therefore, was not processed, and shall provide the address at which the financial institution is to receive service of summons.

(c) For purposes of this subsection, financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union whether chartered by the United States, the Department of Banking and Finance, or a foreign state agency.

(d) The notice of designation, modification, or revocation shall be made by a financial institution on forms prescribed by the department.

(e) The Department of Banking and Finance, any employee of the department, or any person acting on behalf of the department shall be immune from civil and criminal liability for any acts or omissions which occur as a result of the requirements of this subsection.

Source: R.S.1867, Code § 244, p. 433; R.S.1913, § 7785; C.S.1922, § 8729; C.S.1929, § 20-1056; R.S.1943, § 25-1056; Laws 1953, c. 68, § 1, p. 219; Laws 1955, c. 85, § 3, p. 255; Laws 1959, c. 101, § 4, p. 423; Laws 1972, LB 1032, § 127; Laws 1974, LB 737, § 1; Laws 1980, LB 597, § 15; Laws 1988, LB 1030, § 17; Laws 1993, LB 121, § 169; Laws 1995, LB 420, § 1; Laws 1996, LB 1048, § 1; Laws 1997, LB 771, § 1; Laws 2015, LB195, § 2. Operative date January 1, 2016.

ARTICLE 11

TRIAL

(f) EXCEPTIONS

Section

25-1140.09. Bill of exceptions; preparation; court reporter; fees; procedure for preparation; taxation of cost.

(f) EXCEPTIONS

25-1140.09 Bill of exceptions; preparation; court reporter; fees; procedure for preparation; taxation of cost.

On the application of the county attorney or any party to a suit in which a record of the proceedings has been made or upon the filing of a praecipe for a bill of exceptions by an appealing party in the office of the clerk of the district court as provided in section 25-1140, the court reporter shall prepare a transcribed copy of the proceedings so recorded or any part thereof. The reporter shall be entitled to receive, in addition to his or her salary, a per-page fee as prescribed by the Supreme Court for the original copy and each

additional copy, to be paid by the party requesting the same except as otherwise provided in this section.

When the transcribed copy of the proceedings is required by the county attorney, the fee therefor shall be paid by the county in the same manner as other claims are paid. When the defendant in a criminal case, after conviction, makes an affidavit that he or she is unable by reason of his or her poverty to pay for such copy, the court or judge thereof may, by order endorsed on such affidavit, direct delivery of such transcribed copy to such defendant, and the fee shall be paid by the county in the same manner as other claims are allowed and paid.

The fee for preparation of a bill of exceptions and the procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court. The fee paid shall be taxed, by the clerk of the district court, to the party against whom the judgment or decree is rendered except as otherwise ordered by the presiding district judge.

Source: Laws 1879, § 49, p. 93; Laws 1907, c. 43, § 1, p. 182; R.S.1913, § 1200; C.S.1922, § 1123; Laws 1925, c. 67, § 1, p. 225; C.S. 1929, § 27-339; R.S.1943, § 24-342; Laws 1949, c. 45, § 1, p. 150; Laws 1957, c. 107, § 5, p. 380; Laws 1961, c. 104, § 1, p. 336; Laws 1961, c. 105, § 1, p. 337; Laws 1961, c. 106, § 1, p. 338; Laws 1971, LB 357, § 1; Laws 1973, LB 146, § 1; Laws 1973, LB 268, § 2; Laws 1974, LB 647, § 2; Laws 1978, LB 271, § 1; Laws 1982, LB 722, § 1; R.S.1943, (1985), § 24-342; Laws 1991, LB 37, § 1; Laws 2005, LB 348, § 3; Laws 2015, LB268, § 4.

Effective date August 30, 2015.

ARTICLE 21

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES

(e) FORECLOSURE OF MORTGAGES

Section

- 25-2142. Complaint for foreclosure or satisfaction; allegations; complainant; designate person to receive notices; when.
- (qq) HUMAN TRAFFICKING VICTIMS CIVIL REMEDY ACT
- 25-21,297. Act, how cited.
- 25-21,298. Terms, defined.
- 25-21,299. Civil action authorized; recovery; attorney's fees and costs; injunctive relief.
- 25-21,300. Time for bringing action; limitation.
- 25-21,301. Use of pseudonym.
- (rr) HUMAN TRAFFICKING CIVIL FORFEITURE
- 25-21,302. Human trafficking; labor trafficking or sex trafficking; forfeiture of property; civil proceeding; confiscating authority; duties; seizure of property; proceedings; petition; Attorney General; duties; answer; hearing; disposition of proceeds.

(e) FORECLOSURE OF MORTGAGES

25-2142 Complaint for foreclosure or satisfaction; allegations; complainant; designate person to receive notices; when.

(1) Upon filing a complaint for the foreclosure or satisfaction of a mortgage, the complainant shall state therein whether any proceedings have been had at

law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected and paid.

(2) Subsequent to the filing of a complaint for the foreclosure or satisfaction of a mortgage under this section, the complainant, within five business days after receipt of a written request by a designated representative of the incorporated city or village having jurisdiction of the mortgaged property, shall provide the name and address of a person designated by the complainant to accept notices of violations of ordinances by the owner of the mortgaged property on behalf of the complainant. Failure to provide the name and address required under this subsection shall not void, invalidate, or affect in any way a complaint for the foreclosure or satisfaction of a mortgage filed under this section. This subsection does not impose upon the complainant a duty to maintain the mortgaged property. The designation of a representative to receive notices shall terminate upon transfer of fee title ownership to the mortgaged property.

Source: R.S.1867, Code § 850, p. 543; R.S.1913, § 8259; C.S.1922, § 9212; C.S.1929, § 20-2144; R.S.1943, § 25-2142; Laws 2002, LB 876, § 36; Laws 2015, LB151, § 1.
Effective date August 30, 2015.

(qq) HUMAN TRAFFICKING VICTIMS CIVIL REMEDY ACT

25-21,297 Act, how cited.

Sections 25-21,297 to 25-21,301 shall be known and may be cited as the Human Trafficking Victims Civil Remedy Act.

Source: Laws 2015, LB294, § 1.
Operative date May 20, 2015.

25-21,298 Terms, defined.

For purposes of the Human Trafficking Victims Civil Remedy Act:

(1) Human trafficking means labor trafficking, labor trafficking of a minor, sex trafficking, or sex trafficking of a minor, as those terms are defined in section 28-830; and

(2) Trafficking victim has the same meaning as in section 28-830.

Source: Laws 2015, LB294, § 2.
Operative date May 20, 2015.

25-21,299 Civil action authorized; recovery; attorney's fees and costs; injunctive relief.

(1) Any trafficking victim or his or her parent or legal guardian who suffered or continues to suffer personal or psychological injury as a result of such human trafficking may bring a civil action against any person who knowingly (a) engaged in human trafficking of such victim within this state or (b) aided or assisted with the human trafficking of such victim within this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Human Trafficking Victims Civil Remedy Act may recover his or her actual damages plus any and all attorney's fees and costs reasonably associated with the civil action. In addition to all other remedies available under the act, the court may

also award temporary, preliminary, and permanent injunctive relief as the court deems necessary and appropriate.

Source: Laws 2015, LB294, § 3.
Operative date May 20, 2015.

25-21,300 Time for bringing action; limitation.

Notwithstanding any other provision of law, any action to recover damages under the Human Trafficking Victims Civil Remedy Act shall be filed within ten years after the later of:

- (1) The conclusion of any related criminal prosecution against the person or persons from whom recovery is sought;
- (2) The receipt of actual or constructive notice sent or given to the trafficking victim or his or her parent or legal guardian by a member of a law enforcement entity informing the victim or his or her parent or legal guardian that the entity has identified the person who knowingly (a) engaged in human trafficking of such victim or (b) aided or assisted with the human trafficking of such victim;
- (3) The time at which the human trafficking of the trafficking victim ended if he or she was eighteen years of age or older; or
- (4) The victim reaching the age of majority if the victim was under eighteen years of age at the time he or she was a victim of human trafficking.

Source: Laws 2015, LB294, § 4.
Operative date May 20, 2015.

25-21,301 Use of pseudonym.

In any action brought pursuant to the Human Trafficking Victims Civil Remedy Act, a plaintiff may request to use a pseudonym instead of his or her legal name in all court proceedings and records. Upon finding that the use of a pseudonym is proper, the court shall ensure that the pseudonym is used in all court proceedings and records.

Source: Laws 2015, LB294, § 5.
Operative date May 20, 2015.

(rr) HUMAN TRAFFICKING CIVIL FORFEITURE

25-21,302 Human trafficking; labor trafficking or sex trafficking; forfeiture of property; civil proceeding; confiscating authority; duties; seizure of property; proceedings; petition; Attorney General; duties; answer; hearing; disposition of proceeds.

(1)(a) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of section 28-831 may be forfeited through a civil proceeding as provided in this section.

(b) The following property shall be subject to civil forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of section 28-831:

- (i) Conveyances, including aircraft, vehicles, or vessels;
- (ii) Books, records, telecommunication equipment, or computers;
- (iii) Money or weapons;

(iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;

(v) Negotiable instruments and securities;

(vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;

(vii) Any property traceable to proceeds from a violation; and

(viii) Any real property, including any right, title, and interest in the whole of or any part of any lot or tract of land, used in furtherance of a violation of section 28-831.

(c)(i) No property used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the property is a consenting party or privy to a violation of section 28-831.

(ii) No property is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his or her knowledge or consent. If the confiscating authority has reason to believe that the property is leased or rented property, then the confiscating authority shall notify the owner of the property within five days after the confiscation or within five days after forming reason to believe that the property is leased or rented property.

(iii) Forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if such party neither had knowledge of nor consented to the act or omission.

(2) No property shall be forfeited under this section, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without his or her knowledge or consent.

(3) Seizure without process may be made if the seizure is incident to an arrest or a search under a search warrant.

(4)(a) When any property is seized under this section, proceedings shall be instituted within a reasonable period of time from the date of seizure or the subject property shall be immediately returned to the party from whom seized.

(b) A petition for forfeiture shall be filed by the Attorney General or a county attorney in the name of the State of Nebraska and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought, or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the district court or the county court. A copy of the petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(i) The owner of the property if the owner's address is known;

(ii) Any secured party who has registered a lien or filed a financing statement as provided by law if the identity of the secured party can be ascertained by the entity filing the petition by making a good faith effort to ascertain the identity of the secured party;

(iii) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the seizing law enforcement agency has actual knowledge; and

(iv) Any person in possession of property subject to forfeiture at the time that it was seized.

(5) If the property is a motor vehicle subject to titling under the Motor Vehicle Certificate of Title Act or a vessel subject to titling under the State Boat Act, and if there is any reasonable cause to believe that the motor vehicle or vessel has been titled, inquiry of the Department of Motor Vehicles shall be made as to what the records of the department show as to who is the record owner of the motor vehicle or vessel and who, if anyone, holds any lien or security interest that affects the motor vehicle or vessel.

(6) If the property is a motor vehicle or vessel and is not titled in the State of Nebraska, then an attempt shall be made to ascertain the name and address of the person in whose name the motor vehicle or vessel is licensed, and if the motor vehicle or vessel is licensed in a state which has in effect a certificate of title law, inquiry of the appropriate agency of that state shall be made as to what the records of the agency show as to who is the record owner of the motor vehicle or vessel and who, if anyone, holds any lien, security interest, or other instrument in the nature of a security device that affects the motor vehicle or vessel.

(7) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, inquiry shall be made as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(8) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, inquiry shall be made as to what the records of the Federal Aviation Administration show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(9) If the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage, or deed of trust that affects the property, the record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage, or deed of trust that affects the property is to be named in the petition of forfeiture and is to be served with process in the same manner as in civil cases.

(10) If the owner of the property cannot be found and served with a copy of the petition of forfeiture or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, there shall be filed with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of,," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall be completed in the same manner as is provided in the code of civil procedure for the service of process in civil actions in the district courts of this state.

(11) No proceedings instituted pursuant to this section shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by this section shall be introduced into evidence at the hearing.

(12)(a) An owner of property that has been seized shall file an answer within thirty days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the seizing law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty days after filing the answer or at the succeeding term of court if court would not be in session within thirty days after filing the answer. The court may postpone the forfeiture hearing to a date past the time any criminal action is pending against the owner upon request of any party.

(b) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The burden of proof placed upon the petitioner in regard to property forfeited under this section shall be by a preponderance of the evidence.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his or her lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage, or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property. However, if proof at the hearing discloses that the interest of any bona fide lienholder, any secured party, any other person holding an interest in the property in the nature of a security interest, or any holder of a bona fide encumbrance, mortgage, or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him or her. If the interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited.

(13) Unless otherwise provided in this section, all personal property which is forfeited under this section shall be liquidated and, after deduction of court costs and the expense of liquidation, the proceeds shall be remitted to the county treasurer of the county in which the seizure was made. The county treasurer shall remit all such proceeds from property forfeited pursuant to this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(14) All money forfeited under this section shall be remitted in the same manner as provided in subsection (13) of this section.

(15) All real estate forfeited under this section shall be sold to the highest bidder at a public auction for cash, the auction to be conducted by the county sheriff or his or her designee at such place, on such notice, and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution at law. The proceeds of the sale shall first be applied to the cost and expense in administering and conducting the sale, then to the satisfaction of all mortgages, deeds of trust, liens, and encumbrances of

record on the property. The remaining proceeds shall be remitted in the same manner as provided in subsection (13) of this section.

(16) The civil forfeiture procedure set forth in this section is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, by injunction, by supersedeas, or by any other manner.

Source: Laws 2015, LB294, § 19.

Operative date May 20, 2015.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.

State Boat Act, see section 37-1201.



CHAPTER 27

COURTS; RULES OF EVIDENCE

Article.

4. Relevancy and Its Limits. 27-413.

ARTICLE 4

RELEVANCY AND ITS LIMITS

Section

27-413. Offense of sexual assault, defined.

27-413 Offense of sexual assault, defined.

For purposes of sections 27-414 and 27-415, offense of sexual assault means sexual assault under section 28-319 or 28-320, sexual assault of a child under section 28-319.01 or 28-320.01, sexual assault by use of an electronic communication device under section 28-320.02, sexual abuse of an inmate or parolee under sections 28-322.01 to 28-322.03, sexual abuse of a protected individual under section 28-322.04, an attempt or conspiracy to commit any of the crimes listed in this section, or the commission of or conviction for a crime in another jurisdiction that is substantially similar to any crime listed in this section.

Source: Laws 2009, LB97, § 4; Laws 2015, LB294, § 8.
Operative date May 20, 2015.



CHAPTER 28

CRIMES AND PUNISHMENTS

Article.

1. Provisions Applicable to Offenses Generally.
 - (a) General Provisions. 28-101 to 28-109.
 - (c) Change in Penalties. 28-116.
2. Inchoate Offenses. 28-201 to 28-204.
3. Offenses against the Person.
 - (a) General Provisions. 28-303 to 28-323.
 - (c) Homicide of the Unborn Child Act. 28-393, 28-394.
 - (d) Assault of an Unborn Child Act. 28-397.
4. Drugs and Narcotics. 28-401 to 28-470.
5. Offenses against Property. 28-504 to 28-519.
6. Offenses Involving Fraud. 28-603 to 28-639.
7. Offenses Involving the Family Relation. 28-703 to 28-721.
8. Offenses Relating to Morals. 28-801.01 to 28-831.
9. Offenses Involving Integrity and Effectiveness of Government Operation. 28-912, 28-932.
10. Offenses against Animals. 28-1005 to 28-1019.
11. Gambling. 28-1102 to 28-1104.
12. Offenses against Public Health and Safety. 28-1212.03 to 28-1224.
13. Miscellaneous Offenses.
 - (p) Computers. 28-1344, 28-1345.
 - (s) Public Protection Act. 28-1356.
14. Noncode Provisions.
 - (c) Tobacco, Vapor Products, or Alternative Nicotine Products. 28-1429.03.
 - (f) Drugs. 28-1437, 28-1438.
 - (k) Child Pornography Prevention Act. 28-1463.05.
15. Nebraska Justice Reinvestment Working Group. 28-1501. Transferred.

ARTICLE 1

PROVISIONS APPLICABLE TO OFFENSES GENERALLY

(a) GENERAL PROVISIONS

| | |
|------------|---|
| Section | |
| 28-101. | Code, how cited. |
| 28-104. | Offense; crime; synonymous. |
| 28-105. | Felonies; classification of penalties; sentences; where served; eligibility for probation; post-release supervision; applicability of changes to penalties. |
| 28-105.01. | Repealed. Laws 2015, LB 268, § 35. |
| 28-106. | Misdemeanors; classification of penalties; sentences; where served. |
| 28-109. | Terms, defined. |

(c) CHANGE IN PENALTIES

- 28-116. Changes made by Laws 2015, LB605; applicability.

(a) GENERAL PROVISIONS

28-101 Code, how cited.

Sections 28-101 to 28-468, 28-470 to 28-1357, 28-1418.01, and 28-1429.03 shall be known and may be cited as the Nebraska Criminal Code.

Source: Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws

1986, LB 956, § 12; Laws 1986, LB 969, § 1; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws 1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 571, § 2; Laws 1990, LB 1018, § 1; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB 1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB 6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws 1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003, LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1; Laws 2010, LB252, § 1; Laws 2010, LB594, § 1; Laws 2010, LB894, § 1; Laws 2010, LB1103, § 11; Laws 2011, LB20, § 1; Laws 2011, LB226, § 1; Laws 2011, LB667, § 1; Laws 2013, LB3, § 1; Laws 2013, LB44 § 1; Laws 2014, LB403, § 1; Laws 2014, LB863, § 15; Laws 2015, LB390, § 1.

Effective date May 28, 2015.

28-104 Offense; crime; synonymous.

The terms offense and crime are synonymous as used in this code and mean a violation of, or conduct defined by, any statute for which a fine or imprisonment may be imposed.

Source: Laws 1977, LB 38, § 4; Laws 2015, LB268, § 5.

Effective date August 30, 2015.

28-105 Felonies; classification of penalties; sentences; where served; eligibility for probation; post-release supervision; applicability of changes to penalties.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into nine classes which are distinguished from one another by the following penalties which are authorized upon conviction:

| | |
|------------------------|--|
| Class IA felony | Life imprisonment |
| Class IB felony | Maximum—life imprisonment |
| | Minimum—twenty years imprisonment |
| Class IC felony | Maximum—fifty years imprisonment |
| | Mandatory minimum—five years imprisonment |
| Class ID felony | Maximum—fifty years imprisonment |
| | Mandatory minimum—three years imprisonment |
| Class II felony | Maximum—fifty years imprisonment |
| | Minimum—one year imprisonment |
| Class IIA felony | Maximum—twenty years imprisonment |
| | Minimum—none |
| Class III felony | Maximum—four years imprisonment and two years post-release supervision or twenty-five thousand dollars fine, or both |

| | |
|-----------------------------|---|
| | Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed |
| Class IIIA felony | Maximum—three years imprisonment and eighteen months post-release supervision or ten thousand dollars fine, or both |
| | Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed |
| Class IV felony | Maximum—two years imprisonment and twelve months post-release supervision or ten thousand dollars fine, or both |
| | Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed |

(2)(a) All sentences for maximum terms of imprisonment for one year or more for felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services.

(b) All sentences for maximum terms of imprisonment of less than one year shall be served in the county jail.

(3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222 to increase sentences for habitual criminals.

(4) A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.

(5) All sentences of post-release supervision shall be served under the jurisdiction of the Office of Probation Administration and shall be subject to conditions imposed pursuant to section 29-2262 and subject to sanctions authorized pursuant to section 29-2266.

(6) Any person who is sentenced to imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(7) The changes made to the penalties for Class III, IIIA, and IV felonies by Laws 2015, LB605, do not apply to any offense committed prior to August 30, 2015, as provided in section 28-116.

Source: Laws 1977, LB 38, § 5; Laws 1989, LB 592, § 1; Laws 1995, LB 371, § 2; Laws 1997, LB 364, § 1; Laws 1998, LB 900, § 1; Laws 1998, LB 1266, § 1; Laws 2002, Third Spec. Sess., LB 1, § 1; Laws 2011, LB12, § 1; Laws 2015, LB268, § 6; Laws 2015, LB605, § 6.
Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB268, section 6, with LB605, section 6, to reflect all amendments.

28-105.01 Repealed. Laws 2015, LB 268, § 35.

28-106 Misdemeanors; classification of penalties; sentences; where served.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

| | |
|-------------------------------|--------------------------------|
| Class I misdemeanor | Maximum—not more than one year |
|-------------------------------|--------------------------------|

| | |
|----------------------------------|--|
| | imprisonment, or one thousand dollars fine, or both |
| | Minimum—none |
| Class II misdemeanor | Maximum—six months imprisonment, or one thousand dollars fine, or both |
| | Minimum—none |
| Class III misdemeanor | Maximum—three months imprisonment, or five hundred dollars fine, or both |
| | Minimum—none |
| Class IIIA misdemeanor | Maximum—seven days imprisonment, five hundred dollars fine, or both |
| | Minimum—none |
| Class IV misdemeanor | Maximum—no imprisonment, five hundred dollars fine |
| | Minimum—none |
| Class V misdemeanor | Maximum—no imprisonment, one hundred dollars fine |
| | Minimum—none |
| Class W misdemeanor | Driving under the influence or implied consent |
| | First conviction |
| | Maximum—sixty days imprisonment and five hundred dollars fine |
| | Mandatory minimum—seven days imprisonment and five hundred dollars fine |
| | Second conviction |
| | Maximum—six months imprisonment and five hundred dollars fine |
| | Mandatory minimum—thirty days imprisonment and five hundred dollars fine |
| | Third conviction |
| | Maximum—one year imprisonment and one thousand dollars fine |
| | Mandatory minimum—ninety days imprisonment and one thousand dollars fine |

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that such sentences may be served in institutions under the jurisdiction of the Department of Correctional Services if the sentence is to be served concurrently or consecutively with a term for conviction of a felony and the combined sentences total a term of one year or more.

Source: Laws 1977, LB 38, § 6; Laws 1982, LB 568, § 1; Laws 1986, LB 153, § 1; Laws 1992, LB 291, § 1; Laws 1998, LB 309, § 1; Laws 2002, LB 82, § 3; Laws 2005, LB 594, § 1; Laws 2011, LB675, § 1; Laws 2015, LB605, § 7.
Effective date August 30, 2015.

28-109 Terms, defined.

For purposes of the Nebraska Criminal Code, unless the context otherwise requires:

(1) Act shall mean a bodily movement, and includes words and possession of property;

(2) Aid or assist shall mean knowingly to give or lend money or credit to be used for, or to make possible or available, or to further activity thus aided or assisted;

(3) Benefit shall mean any gain or advantage to the beneficiary including any gain or advantage to another person pursuant to the desire or consent of the beneficiary;

(4) Bodily injury shall mean physical pain, illness, or any impairment of physical condition;

(5) Conduct shall mean an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

(6) Deadly physical force shall mean force, the intended, natural, and probable consequence of which is to produce death, or which does, in fact, produce death;

(7) Deadly weapon shall mean any firearm, knife, bludgeon, or other device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury;

(8) Deface shall mean to alter the appearance of something by removing, distorting, adding to, or covering all or a part of the thing;

(9) Dwelling shall mean a building or other thing which is used, intended to be used, or usually used by a person for habitation;

(10) Government shall mean the United States, any state, county, municipality, or other political unit, any branch, department, agency, or subdivision of any of the foregoing, and any corporation or other entity established by law to carry out any governmental function;

(11) Governmental function shall mean any activity which a public servant is legally authorized to undertake on behalf of government;

(12) Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except self-propelled chairs used by persons who are disabled, electric personal assistive mobility devices as defined in section 60-618.02, and bicycles as defined in section 60-611;

(13) Omission shall mean a failure to perform an act as to which a duty of performance is imposed by law;

(14) Peace officer shall mean any officer or employee of the state or a political subdivision authorized by law to make arrests, and shall include members of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder;

(15) Pecuniary benefit shall mean benefit in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain;

(16) Person shall mean any natural person and where relevant a corporation or an unincorporated association;

(17) Public place shall mean a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities;

(18) Public servant shall mean any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses;

(19) Recklessly shall mean acting with respect to a material element of an offense when any person disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation;

(20) Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body;

(21) Tamper shall mean to interfere with something improperly or to make unwarranted alterations in its condition;

(22) Thing of value shall mean real property, tangible and intangible personal property, contract rights, choses in action, services, and any rights of use or enjoyment connected therewith; and

(23) Voluntary act shall mean an act performed as a result of effort or determination, and includes the possession of property if the actor was aware of his or her physical possession or control thereof for a sufficient period to have been able to terminate it.

Source: Laws 1977, LB 38, § 9; Laws 1993, LB 370, § 8; Laws 2002, LB 1105, § 427; Laws 2015, LB95, § 1.
Effective date August 30, 2015.

(c) CHANGE IN PENALTIES

28-116 Changes made by Laws 2015, LB605; applicability.

The changes made to the sections listed in this section by Laws 2015, LB605, shall not apply to any offense committed prior to August 30, 2015. Any such offense shall be construed and punished according to the provisions of law existing at the time the offense was committed. For purposes of this section, an offense shall be deemed to have been committed prior to August 30, 2015, if any element of the offense occurred prior to such date. The following sections are subject to this provision: Sections 9-262, 9-352, 9-434, 9-652, 23-135.01, 28-105, 28-106, 28-201, 28-204, 28-305, 28-306, 28-309, 28-310.01, 28-311, 28-311.01, 28-311.04, 28-311.08, 28-320, 28-322.02, 28-322.03, 28-322.04, 28-323, 28-393, 28-394, 28-397, 28-416, 28-504, 28-507, 28-514, 28-518, 28-519, 28-603, 28-604, 28-611, 28-611.01, 28-620, 28-621, 28-622, 28-627, 28-631, 28-638, 28-639, 28-703, 28-707, 28-813.01, 28-912, 28-932, 28-1005, 28-1009, 28-1102, 28-1103, 28-1104, 28-1212.03, 28-1222, 28-1224, 28-1344, 28-1345, 28-1463.05, 29-1816, 29-2204, 29-2260, 29-2308, 29-4011, 60-6, 197.03, 60-6, 197.06, 68-1017, 68-1017.01, 71-2228, and 71-2229.

Source: Laws 2015, LB605, § 109.
Effective date August 30, 2015.

ARTICLE 2 INCHOATE OFFENSES

Section
28-201. Criminal attempt; conduct; penalties.

Section

28-202. Conspiracy, defined; penalty.

28-204. Accessory to felony, defined; penalties.

28-201 Criminal attempt; conduct; penalties.

(1) A person shall be guilty of an attempt to commit a crime if he or she:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

(2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(4) Criminal attempt is:

(a) A Class II felony when the crime attempted is a Class IA, IB, IC, or ID felony;

(b) A Class IIA felony when the crime attempted is a Class II felony;

(c) A Class IIIA felony when the crime attempted is a Class IIA felony;

(d) A Class IV felony when the crime attempted is a Class III or IIIA felony;

(e) A Class I misdemeanor when the crime attempted is a Class IV felony;

(f) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and

(g) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 10; Laws 1997, LB 364, § 2; Laws 1998, LB 1266, § 3; Laws 2010, LB712, § 7; Laws 2010, LB771, § 2; Laws 2012, LB799, § 1; Laws 2015, LB268, § 7; Laws 2015, LB605, § 8.

Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB268, section 7, with LB605, section 8, to reflect all amendments.

28-202 Conspiracy, defined; penalty.

(1) A person shall be guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a felony:

(a) He or she agrees with one or more persons that they or one or more of them shall engage in or solicit the conduct or shall cause or solicit the result specified by the definition of the offense; and

(b) He or she or another person with whom he or she conspired commits an overt act in pursuance of the conspiracy.

(2) If a person knows that one with whom he or she conspires to commit a crime has conspired with another person or persons to commit the same crime,

he or she is guilty of conspiring to commit such crime with such other person or persons whether or not he or she knows their identity.

(3) If a person conspires to commit a number of crimes, he or she is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) Conspiracy is a crime of the same class as the most serious offense which is an object of the conspiracy.

A person prosecuted for a criminal conspiracy shall be acquitted if such person proves by a preponderance of the evidence that his or her conduct occurred in response to an entrapment.

Source: Laws 1977, LB 38, § 11; Laws 2015, LB268, § 8.
Effective date August 30, 2015.

28-204 Accessory to felony, defined; penalties.

(1) A person is guilty of being an accessory to felony if with intent to interfere with, hinder, delay, or prevent the discovery, apprehension, prosecution, conviction, or punishment of another for an offense, he or she:

(a) Harbors or conceals the other;

(b) Provides or aids in providing a weapon, transportation, disguise, or other means of effecting escape or avoiding discovery or apprehension;

(c) Conceals or destroys evidence of the crime or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence;

(d) Warns the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law;

(e) Volunteers false information to a peace officer; or

(f) By force, intimidation, or deception, obstructs anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.

(2)(a) Accessory to felony is a Class III felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class I, IA, IB, IC, or ID felony.

(b) Accessory to felony is a Class IIIA felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class II or IIA felony.

(c) Accessory to felony is a Class IV felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class III or Class IIIA felony.

(d) Accessory to felony is a Class I misdemeanor if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class IV felony.

(e) Accessory to felony is a Class IV felony if the actor violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a felony of any class other than a Class IV felony.

(f) Accessory to felony is a Class I misdemeanor if the actor violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class IV felony.

Source: Laws 1977, LB 38, § 13; Laws 1999, LB 40, § 1; Laws 2015, LB605, § 9.

Effective date August 30, 2015.

ARTICLE 3

OFFENSES AGAINST THE PERSON

(a) GENERAL PROVISIONS

Section

- 28-303. Murder in the first degree; penalty.
 28-305. Manslaughter; penalty.
 28-306. Motor vehicle homicide; penalty.
 28-309. Assault in the second degree; penalty.
 28-310.01. Strangulation; penalty; affirmative defense.
 28-311. Criminal child enticement; attempt; penalties.
 28-311.01. Terroristic threats; penalty.
 28-311.04. Stalking; violations; penalties.
 28-311.08. Unlawful intrusion; photograph, film, record, or live broadcast of intimate area; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.
 28-320. Sexual assault; second or third degree; penalty.
 28-322.02. Sexual abuse of an inmate or parolee in the first degree; penalty.
 28-322.03. Sexual abuse of an inmate or parolee in the second degree; penalty.
 28-322.04. Sexual abuse of a protected individual; penalties.
 28-322.05. Repealed. Laws 2015, LB 292, § 9.
 28-323. Domestic assault; penalties.

(c) HOMICIDE OF THE UNBORN CHILD ACT

- 28-393. Manslaughter of an unborn child; penalty.
 28-394. Motor vehicle homicide of an unborn child; penalty.

(d) ASSAULT OF AN UNBORN CHILD ACT

- 28-397. Assault of an unborn child in the first degree; penalty.

(a) GENERAL PROVISIONS

28-303 Murder in the first degree; penalty.

(1) A person commits murder in the first degree if he or she kills another person (a) purposely and with deliberate and premeditated malice, (b) in the perpetration of or attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary, or (c) by administering poison or causing the same to be done.

(2) Murder in the first degree is a Class IA felony.

Source: Laws 1977, LB 38, § 18; Laws 2002, Third Spec. Sess., LB 1, § 3; Laws 2015, LB268, § 9.

Effective date August 30, 2015.

28-305 Manslaughter; penalty.

(1) A person commits manslaughter if he or she kills another without malice upon a sudden quarrel or causes the death of another unintentionally while in the commission of an unlawful act.

(2) Manslaughter is a Class IIA felony.

Source: Laws 1977, LB 38, § 20; Laws 2015, LB605, § 10.
Effective date August 30, 2015.

28-306 Motor vehicle homicide; penalty.

(1) A person who causes the death of another unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide is a Class I misdemeanor.

(3)(a) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide is a Class IIIA felony.

(b) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide is a Class IIA felony. The court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least one year and not more than fifteen years and shall order that the operator's license of such person be revoked for the same period.

(c) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide is a Class II felony if the defendant has a prior conviction for a violation of section 60-6,196 or 60-6,197.06, under a city or village ordinance enacted in conformance with section 60-6,196, or under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the defendant was convicted would have been a violation of section 60-6,196. The court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of fifteen years and shall order that the operator's license of such person be revoked for the same period.

(d) An order of the court described in subdivision (b) or (c) of this subsection shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 1977, LB 38, § 21; Laws 1979, LB 1, § 1; Laws 1992, LB 291, § 2; Laws 1993, LB 370, § 9; Laws 1993, LB 575, § 3; Laws 1997, LB 364, § 3; Laws 2001, LB 38, § 1; Laws 2004, LB 208, § 1; Laws 2006, LB 925, § 1; Laws 2011, LB667, § 3; Laws 2015, LB605, § 11.
Effective date August 30, 2015.

Cross References

Operator's license, assessment of points and revocation, see sections 60-496 to 60-497.01, 60-498 to 60-498.04, 60-499, and 60-4,182 et seq.

28-309 Assault in the second degree; penalty.

(1) A person commits the offense of assault in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument;

(b) Recklessly causes serious bodily injury to another person with a dangerous instrument; or

(c) Unlawfully strikes or wounds another (i) while legally confined in a jail or an adult correctional or penal institution, (ii) while otherwise in legal custody of the Department of Correctional Services, or (iii) while committed as a dangerous sex offender under the Sex Offender Commitment Act.

(2) Assault in the second degree shall be a Class IIA felony.

Source: Laws 1977, LB 38, § 24; Laws 1982, LB 347, § 7; Laws 1997, LB 364, § 4; Laws 2009, LB63, § 5; Laws 2010, LB771, § 3; Laws 2015, LB605, § 12.
Effective date August 30, 2015.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-310.01 Strangulation; penalty; affirmative defense.

(1) A person commits the offense of strangulation if the person knowingly or intentionally impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person.

(2) Except as provided in subsection (3) of this section, strangulation is a Class IIIA felony.

(3) Strangulation is a Class IIA felony if:

(a) The person used or attempted to use a dangerous instrument while committing the offense;

(b) The person caused serious bodily injury to the other person while committing the offense; or

(c) The person has been previously convicted of strangulation.

(4) It is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

Source: Laws 2004, LB 943, § 2; Laws 2015, LB605, § 13.
Effective date August 30, 2015.

28-311 Criminal child enticement; attempt; penalties.

(1)(a) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of fourteen years to enter into any vehicle, whether or not the person knows the age of the child.

(b) No person, by any means and without privilege to do so, shall solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of fourteen years to enter into any place with the intent to seclude the child from his or her parent, guardian, or other legal custodian or the general public, whether or not the person knows the age of the child. For purposes of this subdivision, seclude means to take, remove, hide, secrete, conceal, isolate, or otherwise unlawfully separate.

(2) It is an affirmative defense to a charge under this section that:

(a) The person had the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity;

(b)(i) The person is a law enforcement officer, emergency services provider as defined in section 71-507, firefighter, or other person who regularly provides emergency services, is the operator of a bookmobile or other such vehicle operated by the state or a political subdivision and used for informing, educating, organizing, or transporting children, is a paid employee of, or a volunteer for, a nonprofit or religious organization which provides activities for children, or is an employee or agent of or a volunteer acting under the direction of any board of education and (ii) the person listed in subdivision (2)(b)(i) of this section was, at the time the person undertook the activity, acting within the scope of his or her lawful duties in that capacity; or

(c) The person undertook the activity in response to a bona fide emergency situation or the person undertook the activity in response to a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(3) Any person who violates this section commits criminal child enticement and is guilty of a Class IIIA felony. If such person has previously been convicted of (a) criminal child enticement under this section, (b) sexual assault of a child in the first degree under section 28-319.01, (c) sexual assault of a child in the second or third degree under section 28-320.01, (d) child enticement by means of an electronic communication device under section 28-320.02, or (e) assault under section 28-308, 28-309, or 28-310, kidnapping under section 28-313, or false imprisonment under section 28-314 or 28-315 when the victim was under eighteen years of age when such person violates this section, such person is guilty of a Class IIA felony.

Source: Laws 1999, LB 49, § 2; Laws 2006, LB 1199, § 3; Laws 2009, LB97, § 10; Laws 2011, LB665, § 1; Laws 2015, LB605, § 14.
Effective date August 30, 2015.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-311.01 Terroristic threats; penalty.

(1) A person commits terroristic threats if he or she threatens to commit any crime of violence:

- (a) With the intent to terrorize another;
- (b) With the intent of causing the evacuation of a building, place of assembly, or facility of public transportation; or
- (c) In reckless disregard of the risk of causing such terror or evacuation.

(2) Terroristic threats is a Class IIIA felony.

Source: Laws 1986, LB 956, § 11; Laws 2015, LB605, § 15.
Effective date August 30, 2015.

28-311.04 Stalking; violations; penalties.

(1) Except as provided in subsection (2) of this section, any person convicted of violating section 28-311.03 is guilty of a Class I misdemeanor.

(2) Any person convicted of violating section 28-311.03 is guilty of a Class IIIA felony if:

- (a) The person has a prior conviction under such section or a substantially conforming criminal violation within the last seven years;
- (b) The victim is under sixteen years of age;
- (c) The person possessed a deadly weapon at any time during the violation;
- (d) The person was also in violation of section 28-311.09, 42-924, or 42-925 at any time during the violation; or
- (e) The person has been convicted of any felony in this state or has been convicted of a crime in another jurisdiction which, if committed in this state, would constitute a felony and the victim or a family or household member of the victim was also the victim of such previous felony.

Source: Laws 1992, LB 1098, § 3; Laws 1993, LB 299, § 3; Laws 2006, LB 1113, § 23; Laws 2015, LB605, § 16.
Effective date August 30, 2015.

28-311.08 Unlawful intrusion; photograph, film, record, or live broadcast of intimate area; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.

(1) It shall be unlawful for any person to knowingly intrude upon any other person without his or her consent or knowledge in a place of solitude or seclusion.

(2) It shall be unlawful for any person to knowingly photograph, film, record, or live broadcast an image of the intimate area of any other person without his or her knowledge and consent when his or her intimate area would not be generally visible to the public regardless of whether such other person is located in a public or private place.

(3) For purposes of this section:

(a) Intimate area means the naked or undergarment-clad genitalia, pubic area, buttocks, or female breast of an individual;

(b) Intrude means either the:

(i) Viewing of another person in a state of undress as it is occurring; or

(ii) Recording by video, photographic, digital, or other electronic means of another person in a state of undress; and

(c) Place of solitude or seclusion means a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

(4)(a) Violation of this section involving an intrusion as defined in subdivision (3)(b)(i) of this section or violation under subsection (2) of this section is a Class I misdemeanor.

(b) Subsequent violation of this section involving an intrusion as defined in subdivision (3)(b)(i) of this section, subsequent violation under subsection (2) of this section, or violation of this section involving an intrusion as defined in subdivision (3)(b)(ii) of this section is a Class IV felony.

(c) Violation of this section is a Class IIA felony if video or an image recorded in violation of this section is distributed to another person or otherwise made public in any manner which would enable it to be viewed by another person.

(5) As part of sentencing following a conviction for a violation of this section, the court shall make a finding as to the ages of the defendant and the victim at the time the offense occurred. If the defendant is found to have been nineteen years of age or older and the victim is found to have been less than eighteen years of age at such time, then the defendant shall be required to register under the Sex Offender Registration Act.

(6) No person shall be prosecuted pursuant to subdivision (4)(b) or (c) of this section unless the indictment for such offense is found by a grand jury or a complaint filed before a magistrate within three years after the later of:

(a) The commission of the crime;

(b) Law enforcement's or a victim's receipt of actual or constructive notice of either the existence of a video or other electronic recording made in violation of this section or the distribution of images, video, or other electronic recording made in violation of this section; or

(c) The youngest victim of a violation of this section reaching the age of twenty-one years.

Source: Laws 1996, LB 908, § 1; Laws 2011, LB61, § 1; Laws 2014, LB998, § 2; Laws 2015, LB605, § 17.
Effective date August 30, 2015.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-320 Sexual assault; second or third degree; penalty.

(1) Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree.

(2) Sexual assault shall be in the second degree and is a Class IIA felony if the actor shall have caused serious personal injury to the victim.

(3) Sexual assault shall be in the third degree and is a Class I misdemeanor if the actor shall not have caused serious personal injury to the victim.

Source: Laws 1977, LB 38, § 35; Laws 1978, LB 701, § 2; Laws 1995, LB 371, § 5; Laws 2015, LB605, § 18.
Effective date August 30, 2015.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-322.02 Sexual abuse of an inmate or parolee in the first degree; penalty.

Any person who subjects an inmate or parolee to sexual penetration is guilty of sexual abuse of an inmate or parolee in the first degree. Sexual abuse of an inmate or parolee in the first degree is a Class IIA felony.

Source: Laws 1999, LB 511, § 4; Laws 2015, LB605, § 19.
Effective date August 30, 2015.

28-322.03 Sexual abuse of an inmate or parolee in the second degree; penalty.

Any person who subjects an inmate or parolee to sexual contact is guilty of sexual abuse of an inmate or parolee in the second degree. Sexual abuse of an inmate or parolee in the second degree is a Class IIIA felony.

Source: Laws 1999, LB 511, § 5; Laws 2015, LB605, § 20.
Effective date August 30, 2015.

28-322.04 Sexual abuse of a protected individual; penalties.

(1) For purposes of this section:

(a) Person means an individual employed by the Department of Health and Human Services and includes, but is not limited to, any individual working in central administration or regional service areas or facilities of the department and any individual to whom the department has authorized or delegated control over a protected individual or a protected individual's activities, whether by contract or otherwise; and

(b) Protected individual means an individual in the care or custody of the department.

(2) A person commits the offense of sexual abuse of a protected individual if the person subjects a protected individual to sexual penetration or sexual contact as those terms are defined in section 28-318. It is not a defense to a charge under this section that the protected individual consented to such sexual penetration or sexual contact.

(3) Any person who subjects a protected individual to sexual penetration is guilty of sexual abuse of a protected individual in the first degree. Sexual abuse of a protected individual in the first degree is a Class IIA felony.

(4) Any person who subjects a protected individual to sexual contact is guilty of sexual abuse of a protected individual in the second degree. Sexual abuse of a protected individual in the second degree is a Class IIIA felony.

Source: Laws 2003, LB 17, § 2; Laws 2007, LB296, § 26; Laws 2015, LB605, § 21.
Effective date August 30, 2015.

28-322.05 Repealed. Laws 2015, LB 292, § 9.

28-323 Domestic assault; penalties.

(1) A person commits the offense of domestic assault in the third degree if he or she:

(a) Intentionally and knowingly causes bodily injury to his or her intimate partner;

(b) Threatens an intimate partner with imminent bodily injury; or

(c) Threatens an intimate partner in a menacing manner.

(2) A person commits the offense of domestic assault in the second degree if he or she intentionally and knowingly causes bodily injury to his or her intimate partner with a dangerous instrument.

(3) A person commits the offense of domestic assault in the first degree if he or she intentionally and knowingly causes serious bodily injury to his or her intimate partner.

(4) Violation of subdivision (1)(a) or (b) of this section is a Class I misdemeanor, except that for any subsequent violation of subdivision (1)(a) or (b) of this section, any person so offending is guilty of a Class IIIA felony.

(5) Violation of subdivision (1)(c) of this section is a Class I misdemeanor.

(6) Violation of subsection (2) of this section is a Class IIIA felony, except that for any second or subsequent violation of such subsection, any person so offending is guilty of a Class IIA felony.

(7) Violation of subsection (3) of this section is a Class IIA felony, except that for any second or subsequent violation under such subsection, any person so offending is guilty of a Class II felony.

(8) For purposes of this section, intimate partner means a spouse; a former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship. For purposes of this subsection, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

Source: Laws 2004, LB 613, § 5; Laws 2010, LB507, § 2; Laws 2015, LB605, § 22.

Effective date August 30, 2015.

(c) HOMICIDE OF THE UNBORN CHILD ACT

28-393 Manslaughter of an unborn child; penalty.

(1) A person commits manslaughter of an unborn child if he or she (a) kills an unborn child without malice upon a sudden quarrel with any person or (b) causes the death of an unborn child unintentionally while in the perpetration of or attempt to perpetrate any criminal assault, any sexual assault, arson, robbery, kidnapping, intentional child abuse, hijacking of any public or private means of transportation, or burglary.

(2) Manslaughter of an unborn child is a Class IIA felony.

Source: Laws 2002, LB 824, § 7; Laws 2015, LB605, § 23.

Effective date August 30, 2015.

28-394 Motor vehicle homicide of an unborn child; penalty.

(1) A person who causes the death of an unborn child unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide of an unborn child.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide of an unborn child is a Class I misdemeanor.

(3)(a) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide of an unborn child is a Class IV felony.

(b) Except as provided in subdivision (3)(c) of this section, if the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide of an unborn child is a Class IIIA felony and the court shall, as part of the judgment

of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(c) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06 and the defendant has a prior conviction for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with section 60-6,196, motor vehicle homicide of an unborn child is a Class IIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 2002, LB 824, § 8; Laws 2004, LB 208, § 2; Laws 2011, LB667, § 4; Laws 2015, LB605, § 24.
Effective date August 30, 2015.

(d) ASSAULT OF AN UNBORN CHILD ACT

28-397 Assault of an unborn child in the first degree; penalty.

(1) A person commits the offense of assault of an unborn child in the first degree if he or she, during the commission of any criminal assault on a pregnant woman, intentionally or knowingly causes serious bodily injury to her unborn child.

(2) Assault of an unborn child in the first degree is a Class IIA felony.

Source: Laws 2006, LB 57, § 4; Laws 2015, LB605, § 25.
Effective date August 30, 2015.

ARTICLE 4

DRUGS AND NARCOTICS

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| 28-465. | Medical Cannabidiol Pilot Study; created; physician or pharmacist; duties; risks and benefits form; use; participant; document; contents. |
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28-401 Terms, defined.

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer means to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent means an authorized person who acts on behalf of or at the direction of another person but does not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration means the Drug Enforcement Administration of the United States Department of Justice;

(4) Controlled substance means a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance does not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department means the Department of Health and Human Services;

(7) Division of Drug Control means the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute means to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe means to issue a medical order;

(11) Drug means (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but does not include devices or their components, parts, or accessories;

(12) Deliver or delivery means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but does not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, the sterilized seed of such plant which is incapable of germination, or cannabidiol obtained pursuant to sections 28-463 to 28-468. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time. When industrial hemp as defined in section 2-5701 is in the possession of a person as authorized under section 2-5701, it is not considered marijuana for purposes of the Uniform Controlled Substances Act;

(14) Manufacture means the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic and levorotatory forms;

(17) Opium poppy means the plant of the species *Papaver somniferum* L., except the seeds thereof;

(18) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;

(19) Person means any corporation, association, partnership, limited liability company, or one or more persons;

(20) Practitioner means a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(21) Production includes the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State means the State of Nebraska;

(24) Ultimate user means a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital has the same meaning as in section 71-419;

(26) Cooperating individual means any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis means (a) the separated resin, whether crude or purified, obtained from a plant of the genus *cannabis* or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols. When resins extracted from industrial hemp as defined in section 2-5701 are in the possession of a person as authorized under section 2-5701, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act;

(28) Exceptionally hazardous drug means (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(29) Imitation controlled substance means a substance which is not a controlled substance or controlled substance analogue but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance or controlled substance analogue. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a

health care professional shall not be deemed to be an imitation controlled substance;

(30)(a) Controlled substance analogue means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue does not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid does not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order means an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(33) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(35) Registrant means any person who has a controlled substances registration issued by the state or the administration;

(36) Reverse distributor means a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(37) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(38) Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(39) Electronic signature has the definition found in section 86-621;

(40) Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;

(41) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(42) Compounding has the same meaning as in section 38-2811; and

(43) Cannabinoid receptor agonist shall mean any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body.

Source: Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 273, § 3; Laws 1988, LB 537, § 1; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1; Laws 2013, LB23, § 4; Laws 2014, LB811, § 2; Laws 2014, LB1001, § 2; Laws 2015, LB390, § 2.
Effective date May 28, 2015.

Cross References

Health Care Facility Licensure Act, see section 71-401.

28-401.01 Act, how cited.

Sections 28-401 to 28-456.01, 28-458 to 28-468, and 28-470 shall be known and may be cited as the Uniform Controlled Substances Act.

Source: Laws 1977, LB 38, § 98; R.S.1943, (1995), § 28-438; Laws 2001, LB 113, § 17; Laws 2001, LB 398, § 2; Laws 2005, LB 117, § 2; Laws 2007, LB463, § 1120; Laws 2011, LB20, § 2; Laws 2014, LB811, § 3; Laws 2015, LB390, § 3.
Effective date May 28, 2015.

28-405 Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever

the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Difenoxin;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetyl butyrate;
- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxeridine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacylmorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Proheptazine;

- (40) Properidine;
- (41) Propiram;
- (42) Racemoramide;
- (43) Trimeperidine;
- (44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl)propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;
- (45) Tilidine;
- (46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;
- (47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;
- (48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;
- (49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidiny)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;
- (50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidiny)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
- (51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
- (52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidiny)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
- (53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;
- (54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidiny)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;
- (55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;
- (56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidiny)-propanamide, its optical isomers, salts, and salts of isomers; and
- (57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidiny)propanamide, its optical isomers, salts, and salts of isomers.

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;

- (9) Drotebanol;
- (10) Etorphine, except hydrochloride salt;
- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine; and
- (23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

(3) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;

(4) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;

(5) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;

(6) Lysergic acid diethylamide;

(7) Marijuana;

(8) Mescaline;

(9) Peyote. Peyote shall mean all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;

(10) Psilocybin;

(11) Psilocyn;

(12) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered;

(13) N-ethyl-3-piperidyl benzilate;

(14) N-methyl-3-piperidyl benzilate;

(15) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TCP; and TCP;

(16) Hashish or concentrated cannabis;

(17) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;

(18) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(19) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(20) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(21) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(22) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(23) Alpha-methyltryptamine, which is also known as AMT;

(24) Salvia divinorum or Salvinorin A. Salvia divinorum or Salvinorin A includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

(25) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (A) through (L) of this subdivision, including their salts, isomers, salts of isomers, and nitrogen, oxygen, or sulfur-heterocyclic analogs, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve,

these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(A) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus *cannabis* (*cannabis* plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 *cis* or *trans* tetrahydrocannabinol, and their optical isomers; Delta 6 *cis* or *trans* tetrahydrocannabinol, and their optical isomers; Delta 3,4 *cis* or *trans* tetrahydrocannabinol, and its optical isomers;

(B) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(C) Naphthylmethylinindoles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(D) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(E) Naphthylideneindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(F) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(G) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an

alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranlylmethyl group, whether or not substituted in or on any of the listed ring systems to any extent;

(H) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranlylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(I) Adamantoylindoles: Any compound containing a 3-adamantoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranlylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(J) Tetramethylcyclopropanoylindoles: Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranlylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(K) Indole carboxamides: Any compound containing a 1-indole-3-carboxamide structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranlylmethyl group, substitution at the carboxamide group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-naphthyl, phenyl, aminoalkyl, benzyl, or propionaldehyde groups to any extent;

(L) Indole carboxylates: Any compound containing a 1-indole-3-carboxylate structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranlylmethyl group, substitution at the carboxylate group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-naphthyl, phenyl, aminoalkyl, benzyl, or propionaldehyde groups to any extent; and

(M) Any nonnaturally occurring substance, chemical compound, mixture, or preparation, not specifically listed elsewhere in these schedules and which is not approved for human consumption by the federal Food and Drug Adminis-

tration, containing or constituting a cannabinoid receptor agonist as defined in section 28-401;

(26) Any material, compound, mixture, or preparation containing any quantity of a substituted phenethylamine as listed in subdivisions (A) through (C) of this subdivision, unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from phenylethan-2-amine by substitution on the phenyl ring with a fused methylenedioxy ring, fused furan ring, or a fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems, whether or not the compound is further modified in any of the following ways:

(A) Substitution of the phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups; (B) substitution at the 2-position by any alkyl groups; or (C) substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl or methoxybenzyl groups, and including, but not limited to:

(i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine;

(ii) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine, which is also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine;

(iii) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine, which is also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine;

(iv) 2-(2,5-Dimethoxyphenyl)ethanamine, which is also known as 2C-H or 2,5-Dimethoxyphenethylamine;

(v) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine;

(vi) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine, which is also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine;

(vii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine, which is also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine;

(viii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine;

(ix) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine;

(x) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine;

(xi) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine, which is also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine;

(xii) 1-(2,5-dimethoxy-4-iodophenyl)propan-2-amine, which is also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine;

(xiii) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane, which is also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine;

(xiv) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine, which is also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine;

(xv) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-B-NBOMe; 25B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine;

(xvi) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-I-NBOMe; 25I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine;

(xvii) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine, which is also known as Mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine;

(xviii) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-C-NBOMe; or 25C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine;

(xix) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine, which is also known as 2CB-5-hemiFLY;

(xx) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine, which is also known as 2C-B-FLY;

(xxi) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl) ethanamine, which is also known as 2C-B-butterFLY;

(xxii) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane, which is also known as 2C-B-FLY-NBOMe;

(xxiii) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine, which is also known as bromo-benzodifuranylisopropylamine or bromo-dragonFLY;

(xxiv) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine, which is also known as 2C-INBOH or 25I-NBOH;

(xxv) 5-(2-Aminopropyl)benzofuran, which is also known as 5-APB;

(xxvi) 6-(2-Aminopropyl)benzofuran, which is also known as 6-APB;

(xxvii) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 5-APDB;

(xxviii) 6-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 6-APDB;

(xxix) 2,5-dimethoxy-amphetamine, which is also known as 2, 5-dimethoxy-amethylphenethylamine; 2, 5-DMA;

(xxx) 2,5-dimethoxy-4-ethylamphetamine, which is also known as DOET;

(xxxi) 2,5-dimethoxy-4-(n)-propylthiophenethylamine, which is also known as 2C-T-7;

(xxxii) 5-methoxy-3,4-methylenedioxy-amphetamine;

(xxxiii) 4-methyl-2,5-dimethoxy-amphetamine, which is also known as 4-methyl-2,5-dimethoxy-amethylphenethylamine; DOM and STP;

(xxxiv) 3,4-methylenedioxy amphetamine, which is also known as MDA;

(xxxv) 3,4-methylenedioxymethamphetamine, which is also known as MDMA;

(xxxvi) 3,4-methylenedioxy-N-ethylamphetamine, which is also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA; and

(xxxvii) 3,4,5-trimethoxy amphetamine;

(27) Any material, compound, mixture, or preparation containing any quantity of a substituted tryptamine unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived

from 2-(1H-indol-3-yl)ethanamine, which is also known as tryptamine, by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, and including, but not limited to:

- (A) 5-methoxy-N,N-diallyltryptamine, which is also known as 5-MeO-DALT;
- (B) 4-acetoxy-N,N-dimethyltryptamine, which is also known as 4-AcO-DMT or OAcetylpsilocin;
- (C) 4-hydroxy-N-methyl-N-ethyltryptamine, which is also known as 4-HO-MET;
- (D) 4-hydroxy-N,N-diisopropyltryptamine, which is also known as 4-HO-DIPT;
- (E) 5-methoxy-N-methyl-N-isopropyltryptamine, which is also known as 5-MeOMiPT;
- (F) 5-Methoxy-N,N-Dimethyltryptamine, which is also known as 5-MeO-DMT;
- (G) 5-methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DiPT;
- (H) Diethyltryptamine, which is also known as N,N-Diethyltryptamine, DET; and
- (I) Dimethyltryptamine, which is also known as DMT; and

(28)(A) Any substance containing any quantity of the following materials, compounds, mixtures, or structures:

- (i) 3,4-methylenedioxymethcathinone, or bk-MDMA, or methylone;
- (ii) 3,4-methylenedioxypropylone, or MDPV;
- (iii) 4-methylmethcathinone, or 4-MMC, or mephedrone;
- (iv) 4-methoxymethcathinone, or bk-PMMA, or PMMC, or methedrone;
- (v) Fluoromethcathinone, or FMC;
- (vi) Naphthylpyrovalerone, or naphyrone; or
- (vii) Beta-keto-N-methylbenzodioxolylpropylamine or bk-MBDB or butylone;

(B) Unless listed in another schedule, any substance which contains any quantity of any material, compound, mixture, or structure, other than bupropion, that is structurally derived by any means from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

- (i) Substitution in the ring system to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
- (ii) Substitution at the 3-position with an acyclic alkyl substituent; or
- (iii) Substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of

the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone;
- (2) Methaqualone; and
- (3) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Oxylate; and Sodium Oxybutyrate.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Fenethylamine;
 - (2) N-ethylamphetamine;
 - (3) Amphetamine; amphetamine; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;
 - (4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrine;
 - (5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropionophenone; methylcathinone; monomethylpropion; ephedrine; N-methylcathinone; AL-464; AL-422; AL-463; and UR1432;
 - (6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;
 - (7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine; and
 - (8) Benzylpiperazine, 1-benzylpiperazine.
- (f) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:

- (A) Raw opium;
- (B) Opium extracts;
- (C) Opium fluid;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Tincture of opium;

- (G) Codeine;
- (H) Ethylmorphine;
- (I) Etorphine hydrochloride;
- (J) Hydrocodone;
- (K) Hydromorphone;
- (L) Metopon;
- (M) Morphine;
- (N) Oxycodone;
- (O) Oxymorphone;
- (P) Oripavine;
- (Q) Thebaine; and
- (R) Dihydroetorphine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Diphenoxylate;
- (5) Fentanyl;
- (6) Isomethadone;
- (7) Levomethorphan;
- (8) Levorphanol;
- (9) Metazocine;
- (10) Methadone;
- (11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
- (12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

- (13) Pethidine or meperidine;
 - (14) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
 - (15) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
 - (16) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
 - (17) Phenazocine;
 - (18) Piminodine;
 - (19) Racemethorphan;
 - (20) Racemorphan;
 - (21) Dihydrocodeine;
 - (22) Bulk Propoxyphene in nondosage forms;
 - (23) Sufentanil;
 - (24) Alfentanil;
 - (25) Levo-alpha-acetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
 - (26) Carfentanil;
 - (27) Remifentanil; and
 - (28) Tapentadol.
- (c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
 - (2) Phenmetrazine and its salts;
 - (3) Methamphetamine, its salts, isomers, and salts of its isomers;
 - (4) Methylphenidate; and
 - (5) Lisdexamfetamine, its salts, isomers, and salts of its isomers.
- (d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:
- (1) Amobarbital;
 - (2) Secobarbital;
 - (3) Pentobarbital;
 - (4) Phencyclidine; and
 - (5) Glutethimide.
- (e) Hallucinogenic substances known as:
- (1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.
- (f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone;

(2) Immediate precursors to phencyclidine, PCP:

(A) 1-phenylcyclohexylamine; or

(B) 1-piperidinocyclohexanecarbonitrile, PCC; or

(3) Immediate precursor to fentanyl; 4-anilino-N-phenethyl-4-piperidine (ANNPP).

Schedule III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;

(2) Chlorhexadol;

(3) Embutramide;

(4) Lysergic acid;

(5) Lysergic acid amide;

(6) Methyprylon;

(7) Perampanel;

(8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane;

(11) Nalorphine;

(12) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(13) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing only as a suppository;

(14) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014;

(15) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and

(16) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrzapon.

(c) Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(A) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(D) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(F) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(A) Buprenorphine.

(d) Unless contained on the administration's list of exempt anabolic steroids as the list existed on January 1, 2014, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

(1) 3-beta,17-dihydroxy-5a-androstane;

(2) 3-alpha,17-beta-dihydroxy-5a-androstane;

(3) 5-alpha-androstan-3,17-dione;

(4) 1-androstenediol (3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene);

(5) 1-androstenediol (3-alpha,17-beta-dihydroxy-5-alpha-androst-1-ene);

(6) 4-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);

(7) 5-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);

- (8) 1-androstenedione ([5-alpha]-androst-1-en-3,17-dione);
- (9) 4-androstenedione (androst-4-en-3,17-dione);
- (10) 5-androstenedione (androst-5-en-3,17-dione);
- (11) Bolasterone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);
- (12) Boldenone (17-beta-hydroxyandrost-1,4-diene-3-one);
- (13) Boldione (androsta-1,4-diene-3,17-3-one);
- (14) Calusterone (7-beta,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);
- (15) Clostebol (4-chloro-17-beta-hydroxyandrost-4-en-3-one);
- (16) Dehydrochloromethyltestosterone (4-chloro-17-beta-hydroxy-17-alpha-methyl-androst-1,4-dien-3-one);
- (17) Desoxymethyltestosterone (17-alpha-methyl-5-alpha-androst-2-en-17-beta-ol) (a.k.a. 'madol');
- (18) Delta-1-Dihydrotestosterone (a.k.a. '1-testosterone')(17-beta-hydroxy-5-alpha-androst-1-en-3-one);
- (19) 4-Dihydrotestosterone (17-beta-hydroxy-androstan-3-one);
- (20) Drostanolone (17-beta-hydroxy-2-alpha-methyl-5-alpha-androstan-3-one);
- (21) Ethylestrenol (17-alpha-ethyl-17-beta-hydroxyestr-4-ene);
- (22) Fluoxymesterone (9-fluoro-17-alpha-methyl-11-beta,17-beta-dihydroxyandrost-4-en-3-one);
- (23) Formebolone (formebolone);(2-formyl-17-alpha-methyl-11-alpha,17-beta-dihydroxyandrost-1,4-dien-3-one);
- (24) Furazabol (17-alpha-methyl-17-beta-hydroxyandrostan[2,3-c]-furazan);
- (25) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;
- (26) 4-hydroxytestosterone (4,17-beta-dihydroxy-androst-4-en-3-one);
- (27) 4-hydroxy-19-nortestosterone (4,17-beta-dihydroxy-estr-4-en-3-one);
- (28) Mestanolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);
- (29) Mesterolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);
- (30) Methandienone (17-alpha-methyl-17-beta-hydroxyandrost-1,4-dien-3-one);
- (31) Methandriol (17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-5-ene);
- (32) Methasterone (2-alpha,17-alpha-dimethyl-5-alpha-androstan-17-beta-ol-3-one);
- (33) Methenolone (1-methyl-17-beta-hydroxy-5-alpha-androst-1-en-3-one);
- (34) 17-alpha-methyl-3-beta,17-beta-dihydroxy-5a-androstane;
- (35) 17-alpha-methyl-3-alpha,17-beta-dihydroxy-5a-androstane;
- (36) 17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-4-ene;
- (37) 17-alpha-methyl-4-hydroxynandrolone (17-alpha-methyl-4-hydroxy-17-beta-hydroxyestr-4-en-3-one);
- (38) Methyldienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9(10)-dien-3-one);
- (39) Methyltrienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9,11-trien-3-one);

- (40) Methyltestosterone (17-alpha-methyl-17-beta-hydroxyandrost-4-en-3-one);
- (41) Mibolerone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyestr-4-en-3-one);
- (42) 17-alpha-methyl-delta-1-dihydrotestosterone (17-beta-hydroxy-17-alpha-methyl-5-alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');
- (43) Nandrolone (17-beta-hydroxyestr-4-en-3-one);
- (44) 19-nor-4-androstenediol (3-beta, 17-beta-dihydroxyestr-4-ene);
- (45) 19-nor-4-androstenediol (3-alpha, 17-beta-dihydroxyestr-4-ene);
- (46) 19-nor-5-androstenediol (3-beta, 17-beta-dihydroxyestr-5-ene);
- (47) 19-nor-5-androstenediol (3-alpha, 17-beta-dihydroxyestr-5-ene);
- (48) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
- (49) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- (50) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- (51) Norbolethone (13-beta, 17-alpha-diethyl-17-beta-hydroxygon-4-en-3-one);
- (52) Norclostebol (4-chloro-17-beta-hydroxyestr-4-en-3-one);
- (53) Norethandrolone (17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one);
- (54) Normethandrolone (17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one);
- (55) Oxandrolone (17-alpha-methyl-17-beta-hydroxy-2-oxa-[5-alpha]-androst-3-one);
- (56) Oxymesterone (17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one);
- (57) Oxymetholone (17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-[5-alpha]-androst-3-one);
- (58) Prostanazol (17-beta-hydroxy-5-alpha-androstano[3,2-c]pyrazole);
- (59) Stanozolol (17-alpha-methyl-17-beta-hydroxy-[5-alpha]-androst-2-eno[3,2-c]-pyrazole);
- (60) Stenbolone (17-beta-hydroxy-2-methyl-[5-alpha]-androst-1-en-3-one);
- (61) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- (62) Testosterone (17-beta-hydroxyandrost-4-en-3-one);
- (63) Tetrahydrogestrinone (13-beta,17-alpha-diethyl-17-beta-hydroxygon-4,9,11-trien-3-one);
- (64) Trenbolone (17-beta-hydroxyestr-4,9,11-trien-3-one); and
- (65) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.

(e) Hallucinogenic substances known as:

(1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of

isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Barbital;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);
- (5) Clonazepam;
- (6) Clorazepate;
- (7) Diazepam;
- (8) Ethchlorvynol;
- (9) Ethinamate;
- (10) Flurazepam;
- (11) Mebutamate;
- (12) Meprobamate;
- (13) Methohexital;
- (14) Methylphenobarbital;
- (15) Oxazepam;
- (16) Paraldehyde;
- (17) Petrichloral;
- (18) Phenobarbital;
- (19) Prazepam;
- (20) Alprazolam;
- (21) Bromazepam;
- (22) Camazepam;
- (23) Clobazam;
- (24) Clotiazepam;
- (25) Cloxazolam;
- (26) Delorazepam;
- (27) Estazolam;
- (28) Ethyl loflazepate;
- (29) Fludiazepam;
- (30) Flunitrazepam;
- (31) Halazepam;
- (32) Haloxazolam;
- (33) Ketazolam;
- (34) Loprazolam;
- (35) Lorazepam;
- (36) Lormetazepam;
- (37) Medazepam;
- (38) Nimetazepam;

- (39) Nitrazepam;
- (40) Nordiazepam;
- (41) Oxazolam;
- (42) Pinazepam;
- (43) Temazepam;
- (44) Tetrazepam;
- (45) Triazolam;
- (46) Midazolam;
- (47) Quazepam;
- (48) Zolpidem;
- (49) Dichloralphenazone;
- (50) Zaleplon;
- (51) Zopiclone;
- (52) Fospropofol;
- (53) Alfaxalone;
- (54) Suvorexant; and
- (55) Carisoprodol.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Diethylpropion;
- (2) Phentermine;
- (3) Pemoline, including organometallic complexes and chelates thereof;
- (4) Mazindol;
- (5) Pipradrol;
- (6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);
- (7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);
- (8) Fencamfamin;
- (9) Fenproporex;
- (10) Mefenorex;
- (11) Modafinil; and
- (12) Sibutramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Propoxyphene in manufactured dosage forms;

(2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit; and

(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers to include: Tramadol.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts:

(1) Pentazocine; and

(2) Butorphanol (including its optical isomers).

(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Lorcaserin.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

(i) Primatene Tablets; and

(ii) Bronkaid Dual Action Caplets.

Schedule V

(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(b) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

(c) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Ezogabine (N-(2-amino-4-(4-fluorobenzylamino)-phenyl)-carbamic acid ethyl ester);

(2) Lacosamide ((R)-2-acetoamido-N-benzyl-3-methoxy-propionamide); and

(3) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid).

Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210, § 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws 1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1; Laws 2010, LB792, § 1; Laws 2011, LB19, § 1; Laws 2012, LB670, § 1; Laws 2013, LB298, § 1; Laws 2014, LB811, § 4; Laws 2015, LB390, § 4.

Effective date May 28, 2015.

28-411 Controlled substances; records; by whom kept; contents; compound controlled substances; duties.

(1) Every practitioner who is authorized to administer or professionally use controlled substances shall keep a record of such controlled substances received by him or her and a record of all such controlled substances administered or professionally used by him or her, other than by medical order issued by a practitioner authorized to prescribe, in accordance with subsection (4) of this section.

(2) Manufacturers, wholesalers, distributors, and reverse distributors shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared and of all controlled

substances received and disposed of by them, in accordance with subsection (4) of this section.

(3) Pharmacies shall keep records of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(4) The record of controlled substances received shall in every case show (a) the date of receipt, (b) the name, address, and Drug Enforcement Administration number of the person receiving the controlled substances, (c) the name, address, and Drug Enforcement Administration number of the person from whom received, (d) the kind and quantity of controlled substances received, (e) the kind and quantity of controlled substances produced or removed from process of manufacture, and (f) the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use or the owner and species of animal for which the controlled substances were sold, administered, or dispensed, and the kind and quantity of controlled substances. For any lost, destroyed, or stolen controlled substances, the record shall list the kind and quantity of such controlled substances and the discovery date of such loss, destruction, or theft. Every such record shall be kept for a period of five years from the date of the transaction recorded.

(5) Any person authorized to compound controlled substances shall comply with section 38-2867.01.

Source: Laws 1977, LB 38, § 71; Laws 1988, LB 273, § 4; Laws 1995, LB 406, § 6; Laws 1996, LB 1044, § 69; Laws 2001, LB 398, § 9; Laws 2015, LB37, § 28.
Effective date August 30, 2015.

28-416 Prohibited acts; violations; penalties.

(1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class IIA felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional

practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification

than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class III misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405 shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined three hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined four hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined five hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(15) Any person convicted of violating this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(17) A person knowingly or intentionally in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

(18) In addition to the penalties provided in this section:

(a) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for thirty days and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for ninety days and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any

license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (B) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under this subsection.

Source: Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1; Laws 1989, LB 592, § 2; Laws 1991, LB 742, § 1; Laws 1993, LB 117, § 2; Laws 1995, LB 371, § 6; Laws 1997, LB 364, § 8; Laws 1999, LB 299, § 1; Laws 2001, LB 398, § 14; Laws 2003, LB 46, § 1; Laws 2004, LB 1083, § 86; Laws 2005, LB 117, § 3; Laws 2008, LB844, § 1; Laws 2010, LB800, § 4; Laws 2011, LB19, § 2; Laws 2011, LB463, § 1; Laws 2013, LB298, § 2; Laws 2015, LB605, § 26.

Effective date August 30, 2015.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Nebraska Behavioral Health Services Act, see section 71-801.

28-425 Transferred to section 71-2510.01.

28-463 Cannabidiol; terms, defined; legislative findings.

(1) For purposes of sections 28-463 to 28-468:

(a) Cannabidiol means processed cannabis plant extract, oil, or resin that contains more than ten percent cannabidiol by weight, but not more than three-tenths of one percent tetrahydrocannabinols by weight, and delivered in the form of a liquid or solid dosage form; and

(b) Intractable seizures means intractable, catastrophic genetic, or metabolic epilepsies; Lennox-Gastaut Syndrome; epilepsies consisting of drop seizures at risk for significant bodily injury; or cluster seizures that result in significant life-threatening apnea after the trial and failure of at least three antiepileptic therapies that directly address the epilepsy in question.

(2) The Legislature finds:

(a) There are individuals in Nebraska who suffer from intractable seizures and treatment resistant seizures for which currently available treatment options have been ineffective. Cannabidiol shows promise in treating individuals with intractable seizures and treatment resistant seizures; and

(b) Additional study of cannabidiol for the treatment of intractable seizures and treatment resistant seizures should be undertaken.

(3) The purpose of sections 28-463 to 28-468 is to permit medical professionals to conduct limited-scope, evidence-based studies exploring the safety and efficacy of treating intractable seizures and treatment resistant seizures using cannabidiol.

Source: Laws 2015, LB390, § 5.
Effective date May 28, 2015.
Termination date October 1, 2019.

28-464 Medical Cannabidiol Pilot Study; University of Nebraska and Nebraska Medicine; authority to produce or possess cannabidiol; patient; eligibility.

(1) The University of Nebraska and Nebraska Medicine shall be the only entities in this state authorized to produce or possess cannabidiol for research for purposes of the Medical Cannabidiol Pilot Study.

(2) Cannabidiol shall be obtained from or tested at the University of Nebraska Medical Center and dispensed by the Nebraska Medicine Research Pharmacy.

(3) Cannabidiol may only be obtained by patients with intractable seizures and treatment resistant seizures and on the order of a physician who is licensed to practice medicine and surgery in Nebraska and designated as a medical provider under section 28-465 and administered to a patient by or under the direction or supervision of such medical provider participating in the Medical Cannabidiol Pilot Study.

Source: Laws 2015, LB390, § 6.
Effective date May 28, 2015.
Termination date October 1, 2019.

28-465 Medical Cannabidiol Pilot Study; created; physician or pharmacist; duties; risks and benefits form; use; participant; document; contents.

(1) The University of Nebraska Medical Center shall create the Medical Cannabidiol Pilot Study. The pilot study shall designate at least two medical providers to conduct research on the safety and preliminary effectiveness of cannabidiol to treat patients with intractable seizures and treatment resistant seizures. The medical providers shall be physicians licensed to practice medicine and surgery in Nebraska, and at least one shall be a pediatric neurologist. The medical providers shall adhere to the policies and procedures established by the University of Nebraska Medical Center for the pilot study.

(2) A physician designated as a medical provider or a licensed pharmacist participating in the Medical Cannabidiol Pilot Study shall not be subject to arrest or prosecution, penalized or disciplined in any manner, or denied any right or privilege for approving or recommending the use of cannabidiol under the pilot study.

(3)(a) A physician designated as a medical provider conducting research under the Medical Cannabidiol Pilot Study shall:

(i) Determine eligibility for participation in the pilot study;

(ii) Keep a record of the evaluation and observation of a patient under the physician's care, including the patient's response to cannabidiol treatment; and

(iii) Transmit the record described in subdivision (a)(ii) of this subsection to the department upon request.

(b) All medical records received or maintained by the department pursuant to this section are confidential and may not be disclosed to the public.

(4) The University of Nebraska Medical Center shall create a risks and benefits form to be signed by the medical provider conducting the cannabidiol trial and by the patient who is to be administered cannabidiol or a parent or legal guardian of the patient if the patient is under nineteen years of age. The risks and benefits form shall document their discussion of the risks and benefits of invasive therapies, including, but not limited to, neurostimulation such as vagus nerve stimulation and responsive neurostimulation and epilepsy surgery, including corpus callosotomy, if indicated. This form shall be completed and on file with the University of Nebraska Medical Center before the patient begins the cannabidiol trial.

(5) The University of Nebraska Medical Center shall provide a document to patients who are to be administered cannabidiol or a parent or legal guardian of such patients confirming participation in the Medical Cannabidiol Pilot Study. The document shall include, at a minimum, the patient's name, date of birth, and address, as well as the name and contact information of the patient's medical provider. If the patient is under nineteen years of age, the document shall also include the name, date of birth, and address of the parent or legal guardian of the patient. The document may be provided by the patient to law enforcement agencies in order to verify participation in the pilot study.

Source: Laws 2015, LB390, § 7.
Effective date May 28, 2015.
Termination date October 1, 2019.

28-466 University of Nebraska Medical Center and Nebraska Medicine; duties; powers.

(1) The University of Nebraska Medical Center and Nebraska Medicine, when using cannabidiol for research, shall comply with the Uniform Controlled Substances Act regarding possession of controlled substances, record-keeping requirements relative to the dispensing, use, or administration of controlled substances, and inventory requirements, as applicable.

(2) The University of Nebraska Medical Center and Nebraska Medicine are authorized to pursue any federal permits or waivers necessary to conduct the activities authorized under sections 28-463 to 28-468.

Source: Laws 2015, LB390, § 8.
Effective date May 28, 2015.
Termination date October 1, 2019.

28-467 Prosecution for unlawful possession of marijuana; defense; restrictions on certain actions.

(1) In a prosecution for the unlawful possession of marijuana under the Uniform Controlled Substances Act, it is an affirmative and complete defense to prosecution that:

(a) The defendant suffered from intractable seizures and the use or possession of cannabidiol was pursuant to the order of a physician designated as a medical provider under section 28-465; or

(b) The defendant is the parent or legal guardian of an individual who suffers from intractable seizures and the use or possession of cannabidiol was pursuant to the order of a physician designated as a medical provider under section 28-465.

(2) An agency of this state or a political subdivision thereof, including any law enforcement agency, may not initiate proceedings to remove a child from a home based solely upon the possession or use of cannabidiol by the child or possession of cannabidiol by a parent or legal guardian for use by the child as authorized under sections 28-463 to 28-468.

(3) An employee of the state or any division, agency, or institution thereof or any employee of Nebraska Medicine involved in the research, ordering, dispensing, and administration of cannabidiol under sections 28-463 to 28-468, including its cultivation and processing, shall not be subject to prosecution for unlawful possession, use, distribution, or dispensing of marijuana under the Uniform Controlled Substances Act for activities arising from or related to the use of cannabidiol in the treatment of individuals diagnosed with intractable seizures or treatment resistant seizures.

Source: Laws 2015, LB390, § 9.
Effective date May 28, 2015.
Termination date October 1, 2019.

28-468 Report; contents.

The University of Nebraska Medical Center shall submit a report electronically to the chairperson of the Judiciary Committee of the Legislature, the chairperson of the Health and Human Services Committee of the Legislature, and the Clerk of the Legislature on or before September 15, 2016, and each September 15 thereafter, containing the following performance measures:

(1) The number of patients enrolled in the Medical Cannabidiol Pilot Study, including the number of patients under nineteen years of age;

(2) The number of patients previously enrolled in the pilot study and no longer receiving treatment under the pilot study;

(3) Any changes in intractable seizure or treatment resistant seizure frequency and severity;

(4) Any relevant or related adverse health outcomes for patients; and

(5) A summary of findings concerning appropriate dosing.

Source: Laws 2015, LB390, § 10.
Effective date May 28, 2015.
Termination date October 1, 2019.

28-469 Termination.

Sections 28-463 to 28-468 terminate on October 1, 2019.

Source: Laws 2015, LB390, § 13.
Effective date May 28, 2015.

28-470 Naloxone; authorized activities; immunity from administrative action or criminal prosecution.

(1) A health professional who is authorized to prescribe or dispense naloxone, if acting with reasonable care, may prescribe, administer, or dispense naloxone to any of the following persons without being subject to administrative action or criminal prosecution:

(a) A person who is apparently experiencing or who is likely to experience an opioid-related overdose; or

(b) A family member, friend, or other person in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose.

(2) A family member, friend, or other person who is in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose, other than an emergency responder or peace officer, is not subject to actions under the Uniform Credentialing Act, administrative action, or criminal prosecution if the person, acting in good faith, obtains naloxone from a health professional or a prescription for naloxone from a health professional and administers the naloxone obtained from the health professional or acquired pursuant to the prescription to a person who is apparently experiencing an opioid-related overdose.

(3) An emergency responder is not subject to administrative action or criminal prosecution if the emergency responder, acting in good faith, obtains naloxone from the emergency responder's emergency medical service organization and administers the naloxone to a person who is apparently experiencing an opioid-related overdose.

(4) A peace officer is not subject to administrative action or criminal prosecution if the peace officer, acting in good faith, obtains naloxone from the peace officer's law enforcement agency and administers the naloxone to a person who is apparently experiencing an opioid-related overdose.

(5) For purposes of this section:

(a) Administer has the same meaning as in section 38-2806;

(b) Dispense has the same meaning as in section 38-2817;

(c) Emergency responder means first responder, emergency medical technician, emergency medical technician-intermediate, or emergency medical technician-paramedic licensed under the Emergency Medical Services Practice Act;

(d) Health professional means a physician, physician assistant, nurse practitioner, or pharmacist licensed under the Uniform Credentialing Act;

(e) Law enforcement agency means police department, a town marshal, the office of sheriff, or the Nebraska State Patrol;

(f) Naloxone means naloxone hydrochloride; and

(g) Peace officer has the same meaning as in section 49-801.

Source: Laws 2015, LB390, § 11.

Effective date May 28, 2015.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

Uniform Credentialing Act, see section 38-101.

ARTICLE 5

OFFENSES AGAINST PROPERTY

Section

28-504. Arson, third degree; penalty.

28-507. Burglary; penalty.

28-514. Theft of property lost, mislaid, or delivered by mistake; penalty.

28-518. Grading of theft offenses; aggregation allowed; when.

28-519. Criminal mischief; penalty.

28-504 Arson, third degree; penalty.

(1) A person commits arson in the third degree if he or she intentionally sets fire to, burns, causes to be burned, or by the use of any explosive, damages or destroys, or causes to be damaged or destroyed, any property of another person without such other person's consent. Such property shall not be contained within a building and shall not be a building or occupied structure.

(2) Arson in the third degree is a Class IV felony if the damages amount to one thousand five hundred dollars or more.

(3) Arson in the third degree is a Class I misdemeanor if the damages are five hundred dollars or more but less than one thousand five hundred dollars.

(4) Arson in the third degree is a Class II misdemeanor if the damages are less than five hundred dollars.

Source: Laws 1977, LB 38, § 103; Laws 2010, LB712, § 10; Laws 2015, LB605, § 27.

Effective date August 30, 2015.

28-507 Burglary; penalty.

(1) A person commits burglary if such person willfully, maliciously, and forcibly breaks and enters any real estate or any improvements erected thereon with intent to commit any felony or with intent to steal property of any value.

(2) Burglary is a Class IIA felony.

Source: Laws 1977, LB 38, § 106; Laws 2015, LB605, § 28.

Effective date August 30, 2015.

28-514 Theft of property lost, mislaid, or delivered by mistake; penalty.

A person who comes into control of property of another that he or she knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits theft if, with intent to deprive the owner thereof, he or she fails to take reasonable measures to restore the property to a person entitled to have it. Any person violating the provisions of this section shall, upon conviction thereof, be punished by the penalty prescribed in the next lower classification below the value of the item lost, mislaid, or delivered under a mistake pursuant to section 28-518. Any person convicted pursuant to this section when the value of the property is five hundred dollars or less shall be guilty of a Class III misdemeanor for the first conviction, a Class II misdemeanor for the second conviction, and a Class I misdemeanor for the third or subsequent conviction.

Source: Laws 1977, LB 38, § 113; Laws 1989, LB 200, § 1; Laws 1992, LB 111, § 1; Laws 2015, LB605, § 29.

Effective date August 30, 2015.

28-518 Grading of theft offenses; aggregation allowed; when.

(1) Theft constitutes a Class IIA felony when the value of the thing involved is five thousand dollars or more.

(2) Theft constitutes a Class IV felony when the value of the thing involved is one thousand five hundred dollars or more but less than five thousand dollars.

(3) Theft constitutes a Class I misdemeanor when the value of the thing involved is more than five hundred dollars but less than one thousand five hundred dollars.

(4) Theft constitutes a Class II misdemeanor when the value of the thing involved is five hundred dollars or less.

(5) For any second or subsequent conviction under subsection (3) of this section, any person so offending shall be guilty of a Class IV felony.

(6) For any second conviction under subsection (4) of this section, any person so offending shall be guilty of a Class I misdemeanor, and for any third or subsequent conviction under subsection (4) of this section, the person so offending shall be guilty of a Class IV felony.

(7) Amounts taken pursuant to one scheme or course of conduct from one or more persons may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(8) In any prosecution for theft under sections 28-509 to 28-518, value shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Source: Laws 1977, LB 38, § 117; Laws 1978, LB 748, § 7; Laws 1982, LB 347, § 8; Laws 1992, LB 111, § 2; Laws 2009, LB155, § 7; Laws 2015, LB605, § 30.

Effective date August 30, 2015.

28-519 Criminal mischief; penalty.

(1) A person commits criminal mischief if he or she:

(a) Damages property of another intentionally or recklessly; or

(b) Intentionally tampers with property of another so as to endanger person or property; or

(c) Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat.

(2) Criminal mischief is a Class IV felony if the actor intentionally or maliciously causes pecuniary loss of five thousand dollars or more, or a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service.

(3) Criminal mischief is a Class I misdemeanor if the actor intentionally or maliciously causes pecuniary loss of one thousand five hundred dollars or more but less than five thousand dollars.

(4) Criminal mischief is a Class II misdemeanor if the actor intentionally or maliciously causes pecuniary loss of five hundred dollars or more but less than one thousand five hundred dollars.

(5) Criminal mischief is a Class III misdemeanor if the actor intentionally, maliciously, or recklessly causes pecuniary loss in an amount of less than five hundred dollars, or if his or her action results in no pecuniary loss.

Source: Laws 1977, LB 38, § 118; Laws 1982, LB 347, § 9; Laws 2002, LB 82, § 4; Laws 2015, LB605, § 31.
Effective date August 30, 2015.

Cross References

Unlawful interference with utility poles and wires, penalty, see section 76-2325.01.

ARTICLE 6

OFFENSES INVOLVING FRAUD

Section

| | |
|------------|--|
| 28-603. | Forgery, second degree; penalty; aggregation allowed; when. |
| 28-604. | Criminal possession of a forged instrument; penalty; aggregation allowed; when. |
| 28-611. | Issuing or passing a bad check or similar order; penalty; collection procedures. |
| 28-611.01. | Issuing a no-account check; penalty; aggregation allowed; when. |
| 28-620. | Unauthorized use of a financial transaction device; penalties; prosecution of offense. |
| 28-621. | Criminal possession of a financial transaction device; penalties. |
| 28-622. | Unlawful circulation of a financial transaction device in the first degree; penalty. |
| 28-627. | Unlawful manufacture of a financial transaction device; penalty. |
| 28-631. | Fraudulent insurance act; penalties. |
| 28-636. | Criminal impersonation; identity theft; identity fraud; terms, defined. |
| 28-638. | Criminal impersonation; penalty; restitution. |
| 28-639. | Identity theft; penalty; restitution. |

28-603 Forgery, second degree; penalty; aggregation allowed; when.

(1) Whoever, with intent to deceive or harm, falsely makes, completes, endorses, alters, or utters any written instrument which is or purports to be, or which is calculated to become or to represent if completed, a written instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, commits forgery in the second degree.

(2) Forgery in the second degree is a Class IIA felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is five thousand dollars or more.

(3) Forgery in the second degree is a Class IV felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is one thousand five hundred dollars or more but is less than five thousand dollars.

(4) Forgery in the second degree is a Class I misdemeanor when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is five hundred dollars or more but is less than one thousand five hundred dollars.

(5) Forgery in the second degree is a Class II misdemeanor when the face value, or purported face value, or the amount of any proceeds wrongfully

procured or intended to be procured by the use of such instrument, is less than five hundred dollars.

(6) For the purpose of determining the class of penalty for forgery in the second degree, the face values, or purported face values, or the amounts of any proceeds wrongfully procured or intended to be procured by the use of more than one such instrument, may be aggregated in the indictment or information if such instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such values or amounts shall not be aggregated into more than one offense.

Source: Laws 1977, LB 38, § 125; Laws 2003, LB 17, § 7; Laws 2009, LB155, § 13; Laws 2015, LB605, § 32.
Effective date August 30, 2015.

28-604 Criminal possession of a forged instrument; penalty; aggregation allowed; when.

(1) Whoever, with knowledge that it is forged and with intent to deceive or harm, possesses any forged instrument covered by section 28-602 or 28-603 commits criminal possession of a forged instrument.

(2) Criminal possession of a forged instrument prohibited by section 28-602 is a Class IV felony.

(3) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is five thousand dollars or more, is a Class IV felony.

(4) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is one thousand five hundred dollars or more but less than five thousand dollars, is a Class I misdemeanor.

(5) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is five hundred dollars or more but less than one thousand five hundred dollars, is a Class II misdemeanor.

(6) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is less than five hundred dollars, is a Class III misdemeanor.

(7) For the purpose of determining the class of penalty for criminal possession of a forged instrument prohibited by section 28-603, the amounts or values of more than one such forged instrument may be aggregated in the indictment or information if such forged instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such amounts or values shall not be aggregated into more than one offense.

Source: Laws 1977, LB 38, § 126; Laws 2003, LB 17, § 8; Laws 2009, LB155, § 14; Laws 2015, LB605, § 33.
Effective date August 30, 2015.

28-611 Issuing or passing a bad check or similar order; penalty; collection procedures.

(1) Whoever obtains property, services, or present value of any kind by issuing or passing a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft,

assignment of funds, or order in full upon presentation, commits the offense of issuing a bad check. Issuing a bad check is:

(a) A Class IIA felony if the amount of the check, draft, assignment of funds, or order is five thousand dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more, but less than five thousand dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than five hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under subdivision (1)(c) or (1)(d) of this section, any person so offending shall be guilty of a Class IV felony.

(4) Whoever otherwise issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon its presentation, shall be guilty of a Class II misdemeanor.

(5) Any person in violation of this section who makes voluntary restitution to the injured party for the value of the check, draft, assignment of funds, or order shall also pay ten dollars to the injured party and any reasonable handling fees imposed on the injured party by a financial institution.

(6) In any prosecution for issuing a bad check, the person issuing the check, draft, assignment of funds, or order shall be presumed to have known that he or she did not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation if, within thirty days after issuance of the check, draft, assignment of funds, or order, he or she was notified that the drawee refused payment for lack of funds and he or she failed within ten days after such notice to make the check, draft, assignment of funds, or order good or, in the absence of such notice, he or she failed to make the check, draft, assignment of funds, or order good within ten days after notice that such check, draft, assignment of funds, or order has been returned to the depositor was sent to him or her by the county attorney or his or her deputy, by United States mail addressed to such person at his or her last-known address. Upon request of the depositor and the payment of ten dollars for each check, draft, assignment of funds, or order, the county attorney or his or her deputy shall be required to mail notice to the person issuing the check, draft, assignment of funds, or order as provided in this subsection. The ten-dollar payment shall be payable to the county treasurer and credited to the county general fund. No such payment shall be collected from any county office to which such a check, draft, assignment of funds, or order is issued in the course of the official duties of the office.

(7) Any person convicted of violating this section may, in addition to a fine or imprisonment, be ordered to make restitution to the party injured for the value of the check, draft, assignment of funds, or order and to pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution. If the court, in addition to sentencing any person to imprisonment under this section, also enters an order of restitution, the time permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

(8) The fact that restitution to the party injured has been made and that ten dollars and any reasonable handling fee imposed on the injured party by a financial institution have been paid to the injured party shall be a mitigating factor in the imposition of punishment for any violation of this section.

Source: Laws 1977, LB 38, § 133; Laws 1978, LB 748, § 8; Laws 1983, LB 208, § 1; Laws 1985, LB 445, § 1; Laws 1987, LB 254, § 1; Laws 1992, LB 111, § 3; Laws 2009, LB155, § 15; Laws 2015, LB605, § 34.

Effective date August 30, 2015.

28-611.01 Issuing a no-account check; penalty; aggregation allowed; when.

(1) Whoever issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she has no account with the drawee at the time the check, draft, assignment of funds, or order is issued, commits the offense of issuing a no-account check. Issuing a no-account check is:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is five thousand dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more, but less than five thousand dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than five hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under this section, any person so offending shall be guilty of:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more; and

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is less than one thousand five hundred dollars.

Source: Laws 2009, LB155, § 16; Laws 2015, LB605, § 35.
Effective date August 30, 2015.

28-620 Unauthorized use of a financial transaction device; penalties; prosecution of offense.

(1) A person commits the offense of unauthorized use of a financial transaction device if such person uses such device in an automated banking device, to imprint a sales form, or in any other manner:

(a) For the purpose of obtaining money, credit, property, or services or for making financial payment, with intent to defraud;

(b) With notice that the financial transaction device is expired, revoked, or canceled;

(c) With notice that the financial transaction device is forged, altered, or counterfeited; or

(d) When for any reason his or her use of the financial transaction device is unauthorized either by the issuer or by the account holder.

(2) For purposes of this section, notice shall mean either notice given in person or notice given in writing to the account holder, by registered or certified mail, return receipt requested, duly stamped and addressed to such account holder at his or her last address known to the issuer. Such notice shall be evidenced by a returned receipt signed by the account holder which shall be prima facie evidence that the notice was received.

(3) Any person committing the offense of unauthorized use of a financial transaction device shall be guilty of:

(a) A Class II misdemeanor if the total value of the money, credit, property, or services obtained or the financial payments made are less than five hundred dollars within a six-month period from the date of the first unauthorized use;

(b) A Class I misdemeanor if the total value of the money, credit, property, or services obtained or the financial payments made are five hundred dollars or more but less than one thousand five hundred dollars within a six-month period from the date of the first unauthorized use;

(c) A Class IV felony if the total value of the money, credit, property, or services obtained or the financial payments made are one thousand five hundred dollars or more but less than five thousand dollars within a six-month period from the date of the first unauthorized use; and

(d) A Class IIA felony if the total value of the money, credit, property, or services obtained or the financial payments made are five thousand dollars or more within a six-month period from the date of the first unauthorized use.

(4) Any prosecution under this section may be conducted in any county where the person committed the offense or any one of a series of offenses to be aggregated.

(5) Once aggregated and filed, no separate prosecution for an offense arising out of the same series of offenses aggregated and filed shall be allowed in any county.

Source: Laws 1989, LB 372, § 4; Laws 1994, LB 379, § 1; Laws 2002, LB 276, § 3; Laws 2015, LB605, § 36.

Effective date August 30, 2015.

28-621 Criminal possession of a financial transaction device; penalties.

(1) A person commits the offense of criminal possession of a financial transaction device if, with the intent to defraud, such person has in his or her

possession or under his or her control any financial transaction device issued to a different account holder or which he or she knows or reasonably should know to be lost, stolen, forged, altered, or counterfeited.

(2) Any person committing the offense of criminal possession of one financial transaction device shall be guilty of a Class III misdemeanor.

(3) Any person committing the offense of criminal possession of two or three financial transaction devices, each issued to different account holders, shall be guilty of a Class IV felony.

(4) Any person committing the offense of criminal possession of four or more financial transaction devices, each issued to different account holders, shall be guilty of a Class IIA felony.

Source: Laws 1989, LB 372, § 5; Laws 2015, LB605, § 37.

Effective date August 30, 2015.

28-622 Unlawful circulation of a financial transaction device in the first degree; penalty.

(1) A person commits the offense of unlawful circulation of a financial transaction device in the first degree if such person sells or has in his or her possession or under his or her control with the intent to deliver, circulate, or sell two or more financial transaction devices which he or she knows or reasonably should know to be lost, stolen, forged, altered, counterfeited, or delivered under a mistake as to the identity or address of the account holder.

(2) Any person committing the offense of unlawful circulation of a financial transaction device in the first degree shall be guilty of a Class IIA felony.

Source: Laws 1989, LB 372, § 7; Laws 2015, LB605, § 38.

Effective date August 30, 2015.

28-627 Unlawful manufacture of a financial transaction device; penalty.

(1) A person commits the offense of unlawful manufacture of a financial transaction device if, with intent to defraud, such person:

(a) Falsely makes or manufactures, by printing, embossing, or magnetically encoding, a financial transaction device;

(b) Falsely alters or adds service marks, optical characters, or holographic images to a device which is, purports to be, or is circulated to become or represent if completed a financial transaction device; or

(c) Falsely completes a financial transaction device by adding to an incomplete device to make it appear to be a complete one.

(2) Any person committing the offense of unlawful manufacture of a financial transaction device shall be guilty of a Class IIA felony.

Source: Laws 1989, LB 372, § 11; Laws 2015, LB605, § 39.

Effective date August 30, 2015.

28-631 Fraudulent insurance act; penalties.

(1) A person or entity commits a fraudulent insurance act if he or she:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit from an insurer or

pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(b) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(c) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder or a covered person in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(d) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(e) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(f) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(g) Knowingly and with intent to defraud or deceive issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(h) Knowingly and with intent to defraud or deceive possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(i) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance;

(j) Knowingly and with the intent to defraud or deceive provides false, incomplete, or misleading information to an insurer concerning the number, location, or classification of employees for the purpose of lessening or reducing the premium otherwise chargeable for workers' compensation insurance coverage;

(k) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance;

(l) Willfully operates as or aids and abets another operating as a discount medical plan organization in violation of subsection (1) of section 44-8306; or

(m) Willfully collects fees for purported membership in a discount medical plan organization but purposefully fails to provide the promised benefits.

(2)(a) A violation of subdivisions (1)(a) through (f) of this section is a Class III felony when the amount involved is five thousand dollars or more.

(b) A violation of subdivisions (1)(a) through (f) of this section is a Class IV felony when the amount involved is one thousand five hundred dollars or more but less than five thousand dollars.

(c) A violation of subdivisions (1)(a) through (f) of this section is a Class I misdemeanor when the amount involved is five hundred dollars or more but less than one thousand five hundred dollars.

(d) A violation of subdivisions (1)(a) through (f) of this section is a Class II misdemeanor when the amount involved is less than five hundred dollars.

(e) For any second or subsequent conviction under subdivision (2)(c) of this section, the violation is a Class IV felony.

(f) A violation of subdivisions (1)(g), (i), (j), (k), (l), and (m) of this section is a Class IV felony.

(g) A violation of subdivision (1)(h) of this section is a Class I misdemeanor.

(3) Amounts taken pursuant to one scheme or course of conduct from one person, entity, or insurer may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(4) In any prosecution under this section, if the amounts are aggregated pursuant to subsection (3) of this section, the amount involved in the offense shall be an essential element of the offense that must be proved beyond a reasonable doubt.

(5) A prosecution under this section shall be in lieu of an action under section 44-6607.

(6) For purposes of this section:

(a) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the Director of Insurance. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, discount medical plan organizations, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act. Insurer also means an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer; and

(b) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

Source: Laws 1995, LB 385, § 10; Laws 1997, LB 272, § 1; Laws 2000, LB 930, § 1; Laws 2002, LB 547, § 1; Laws 2008, LB855, § 2; Laws 2009, LB208, § 1; Laws 2015, LB605, § 40.
Effective date August 30, 2015.

Cross References

Comprehensive Health Insurance Pool Act, see section 44-4201.

Intergovernmental Risk Management Act, see section 44-4301.

28-636 Criminal impersonation; identity theft; identity fraud; terms, defined.

For purposes of sections 28-636 to 28-640:

(1) Personal identification document means a birth certificate, motor vehicle operator's license, state identification card, public, government, or private employment identification card, social security card, visa work permit, firearm

owner's identification card, certificate issued under section 69-2404, or passport or any document made or altered in a manner that it purports to have been made on behalf of or issued to another person or by the authority of a person who did not give that authority. Personal identification document does not include a financial transaction device as defined in section 28-618;

(2) Personal identification number means a combination of numerals or letters selected for a customer of a financial institution, a merchant, or any other third party which is used in conjunction with an access device to initiate an electronic funds transfer transaction;

(3) Personal identifying information means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person including a person's: (a) Name; (b) date of birth; (c) address; (d) motor vehicle operator's license number or state identification card number as assigned by the State of Nebraska or another state; (e) social security number or visa work permit number; (f) public, private, or government employer, place of employment, or employment identification number; (g) maiden name of a person's mother; (h) number assigned to a person's credit card, charge card, or debit card, whether issued by a financial institution, corporation, or other business entity; (i) number assigned to a person's depository account, savings account, or brokerage account; (j) personal identification number; (k) electronic identification number, address, or routing code used to access financial information; (l) digital signature; (m) telecommunications identifying information or access device; (n) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; and (o) other number or information which can be used to access a person's financial resources; and

(4) Telecommunications identifying information or access device means a card, plate, code, account number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with other telecommunications identifying information or another telecommunications access device may be used to: (a) Obtain money, goods, services, or any other thing of value; or (b) initiate a transfer of funds other than a transfer originated solely by a paper instrument.

Source: Laws 2009, LB155, § 8; Laws 2015, LB348, § 3.
Effective date May 14, 2015.

28-638 Criminal impersonation; penalty; restitution.

(1) A person commits the crime of criminal impersonation if he or she:

(a) Pretends to be a representative of some person or organization and does an act in his or her fictitious capacity with the intent to gain a pecuniary benefit for himself, herself, or another and to deceive or harm another;

(b) Carries on any profession, business, or any other occupation without a license, certificate, or other authorization required by law;

(c) Knowingly provides false personal identifying information or a false personal identification document to a court or a law enforcement officer; or

(d) Knowingly provides false personal identifying information or a false personal identification document to an employer for the purpose of obtaining employment.

(2)(a) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class III felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five thousand dollars or more. Any second or subsequent conviction under this subdivision is a Class II felony.

(b) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class IV felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was one thousand five hundred dollars or more but less than five thousand dollars. Any second or subsequent conviction under this subdivision is a Class III felony.

(c) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class I misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five hundred dollars or more but less than one thousand five hundred dollars. Any second or subsequent conviction under this subdivision is a Class IV felony.

(d) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class II misdemeanor if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than five hundred dollars. Any second conviction under this subdivision is a Class I misdemeanor, and any third or subsequent conviction under this subdivision is a Class IV felony.

(e) Criminal impersonation, as described in subdivision (1)(c) of this section, is a Class IV felony. Any second conviction under this subdivision is a Class III felony, and any third or subsequent conviction under this subdivision is a Class II felony.

(f) Criminal impersonation, as described in subdivision (1)(d) of this section, is a Class II misdemeanor. Any second or subsequent conviction under this subdivision is a Class I misdemeanor.

(g) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 1977, LB 38, § 130; Laws 2002, LB 276, § 2; R.S.1943, (2008), § 28-608; Laws 2009, LB155, § 10; Laws 2015, LB605, § 41.

Effective date August 30, 2015.

28-639 Identity theft; penalty; restitution.

(1) A person commits the crime of identity theft if he or she knowingly takes, purchases, manufactures, records, possesses, or uses any personal identifying information or entity identifying information of another person or entity without the consent of that other person or entity or creates personal identifying information for a fictional person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose or to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense, or with the intent to obtain or continue employment or with the intent to gain a pecuniary benefit for himself, herself, or another.

(2) Identity theft is not:

(a) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction;

(b) The lawful, good faith exercise of a security interest or a right of setoff by a creditor or a financial institution;

(c) The lawful, good faith compliance by any person when required by any warrant, levy, garnishment, attachment, court order, or other judicial or administrative order, decree, or directive; or

(d) The investigative activities of law enforcement.

(3)(a) Identity theft is a Class IIA felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five thousand dollars or more. Any second or subsequent conviction under this subdivision is a Class II felony.

(b) Identity theft is a Class IV felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was one thousand five hundred dollars or more but less than five thousand dollars. Any second or subsequent conviction under this subdivision is a Class III felony.

(c) Identity theft is a Class I misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five hundred dollars or more but less than one thousand five hundred dollars. Any second or subsequent conviction under this subdivision is a Class IV felony.

(d) Identity theft is a Class II misdemeanor if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than five hundred dollars. Any second conviction under this subdivision is a Class I misdemeanor, and any third or subsequent conviction under this subdivision is a Class IV felony.

(e) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 2009, LB155, § 11; Laws 2015, LB605, § 42.
Effective date August 30, 2015.

ARTICLE 7

OFFENSES INVOLVING THE FAMILY RELATION

Section

- 28-703. Incest; penalty.
 28-707. Child abuse; privileges not available; penalties.
 28-713.01. Cases of child abuse or neglect; completion of investigation; notice; when; right to amend or expunge information.
 28-720. Cases; central registry; classification; expungement; department; report.
 28-720.01. Unfounded reports; how treated.
 28-721. Central registry; record; amend, expunge, or remove; mandatory expungement hearing; waiver; department; duties.

28-703 Incest; penalty.

(1) Any person who shall knowingly intermarry or engage in sexual penetration with any person who falls within the degrees of consanguinity set forth in section 28-702 or any person who engages in sexual penetration with his or her stepchild who is under nineteen years of age commits incest.

(2) Incest is a Class III felony, except that incest with a person who is under eighteen years of age is a Class IIA felony.

(3)(a) For purposes of this section, the definitions found in section 28-318 shall be used.

(b) The testimony of a victim shall be entitled to the same weight as the testimony of victims of other crimes under this code.

Source: Laws 1977, LB 38, § 142; Laws 1978, LB 748, § 9; Laws 1985, LB 89, § 1; Laws 2015, LB605, § 43.
Effective date August 30, 2015.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-707 Child abuse; privileges not available; penalties.

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or

(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class IIA felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and

acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

Source: Laws 1977, LB 38, § 146; Laws 1982, LB 347, § 10; Laws 1993, LB 130, § 3; Laws 1993, LB 430, § 3; Laws 1994, LB 908, § 1; Laws 1996, LB 645, § 15; Laws 1997, LB 364, § 9; Laws 2006, LB 1199, § 9; Laws 2010, LB507, § 3; Laws 2012, LB799, § 2; Laws 2013, LB255, § 1; Laws 2015, LB605, § 44.
Effective date August 30, 2015.

Cross References

Appointment of guardian ad litem, see section 43-272.01.

28-713.01 Cases of child abuse or neglect; completion of investigation; notice; when; right to amend or expunge information.

(1) Upon completion of the investigation pursuant to section 28-713:

(a) In situations of alleged out-of-home child abuse or neglect, the person or persons having custody of the allegedly abused or neglected child or children shall be given written notice of the results of the investigation and any other information the law enforcement agency or department deems necessary. Such notice and information shall be sent by first-class mail; and

(b) The subject of the report of child abuse or neglect shall be given written notice of the determination of the case and whether the subject of the report of child abuse or neglect will be entered into the central registry of child protection cases maintained pursuant to section 28-718 under the criteria provided in section 28-720.

(2) If the subject of the report will be entered into the central registry, the notice to the subject shall be sent by certified mail with return receipt requested or first-class mail to the last-known address of the subject of the report of child abuse or neglect and shall include:

(a) The nature of the report;

(b) The classification of the report under section 28-720;

(c) Notification of the right of the subject of the report of child abuse or neglect to request the department to amend or expunge identifying information from the report or to remove the substantiated report from the central registry in accordance with section 28-723; and

(d) If the subject of the report of child abuse or neglect is a minor child who is twelve years of age or older but younger than nineteen years of age:

(i) Notification of the mandatory expungement hearing to be held according to section 28-721, a waiver form to waive the hearing, and an explanation of the hearing process;

(ii) An explanation of the implications of being entered in the central registry as a subject;

(iii) Notification of any other procedures determined appropriate in rules and regulations adopted and promulgated by the department; and

(iv) Provision of a copy of all notice materials required to be provided to the subject under this subsection to the minor child's attorney of record, parent or guardian, and guardian ad litem, if applicable.

(3) If the subject of the report will not be entered into the central registry, the notice to the subject shall be sent by first-class mail and shall include:

- (a) The nature of the report; and
- (b) The classification of the report under section 28-720.

Source: Laws 1994, LB 1035, § 3; Laws 1997, LB 119, § 3; Laws 2005, LB 116, § 4; Laws 2012, LB1051, § 17; Laws 2014, LB853, § 6; Laws 2015, LB292, § 1.
Effective date August 30, 2015.

28-720 Cases; central registry; classification; expungement; department; report.

(1) All cases entered into the central registry of child protection cases maintained pursuant to section 28-718 shall be classified as one of the following:

(a) Court substantiated, if a court of competent jurisdiction has entered a judgment of guilty against the subject of the report of child abuse or neglect upon a criminal complaint, indictment, or information or there has been an adjudication of jurisdiction of a juvenile court over the child under subdivision (3)(a) of section 43-247 which relates or pertains to the report of child abuse or neglect;

(b) Court pending, if a criminal complaint, indictment, or information or a juvenile petition under subdivision (3)(a) of section 43-247, which relates or pertains to the subject of the report of abuse or neglect, has been filed and is pending in a court of competent jurisdiction; or

(c) Agency substantiated, if the department's determination of child abuse or neglect against the subject of the report of child abuse or neglect was supported by a preponderance of the evidence and based upon an investigation pursuant to section 28-712.01 or 28-713.

(2) If a case described in subdivision (1)(b) of this section is dismissed by the court or a juvenile petition under subdivision (3)(a) of section 43-247 is redesignated to indicate there is no fault on the part of the parent, guardian, or custodian, the case shall be immediately expunged from the central registry of child protection cases.

(3)(a) If the subject of the report of child abuse or neglect is a minor child who is younger than twelve years of age, the case shall not be entered into the central registry of child protection cases.

(b) If a juvenile petition is filed under subdivision (3)(a) of section 43-247 indicating that the juvenile is without proper support through no fault of his or her parent, guardian, or custodian, the case shall not be entered into the central registry of child protection cases.

(4) If the subject of the report of child abuse or neglect is a minor child who is twelve years of age or older but younger than nineteen years of age, the case shall not be classified as court pending in the central registry of child protection cases.

(5) The department shall report annually, on or before September 15, to the Governor and electronically to the chairpersons of the Health and Human Services Committee of the Legislature and the Judiciary Committee of the Legislature the number of cases entered into the central registry of child protection cases in which the subject is a minor child, the ages of such subjects

who are children, and the number of such cases classified as court substantiated or agency substantiated.

Source: Laws 1979, LB 505, § 8; Laws 2005, LB 116, § 11; Laws 2009, LB122, § 2; Laws 2014, LB853, § 9; Laws 2015, LB292, § 2.
Effective date August 30, 2015.

28-720.01 Unfounded reports; how treated.

All reports of child abuse or neglect which are not under subdivision (1)(a), (b), or (c) of section 28-720 shall be considered unfounded and shall be maintained only in the tracking system of child protection cases pursuant to section 28-715 and not in the central registry of child protection cases maintained pursuant to section 28-718.

Source: Laws 2005, LB 116, § 12; Laws 2014, LB853, § 10; Laws 2015, LB292, § 3.
Effective date August 30, 2015.

28-721 Central registry; record; amend, expunge, or remove; mandatory expungement hearing; waiver; department; duties.

(1) At any time, the department may amend, expunge, or remove from the central registry of child protection cases maintained pursuant to section 28-718 any record upon good cause shown and upon notice to the subject of the report of child abuse or neglect.

(2)(a) If the subject of the report of child abuse or neglect is a minor child who is twelve years of age or older but younger than nineteen years of age, the subject is entered into the central registry of child protection cases maintained under section 28-718, and the case involving that minor child is classified as court substantiated or agency substantiated as provided in section 28-720, the department shall conduct a mandatory expungement hearing within sixty days after the subject receives the notification required under section 28-713.01 unless the subject and the subject's attorney of record, parent, guardian, or guardian ad litem sign and return a waiver form as provided under section 28-713.01 within thirty days after receipt. The department shall not, as guardian, sign a waiver form for any subject in its custody. If such subject remains on the central registry of child protection cases, the department shall conduct a second mandatory expungement hearing within sixty days after the subject's nineteenth birthday unless the subject signs and returns a waiver form as provided under section 28-713.01 within thirty days after receipt.

(b) The department may conduct the mandatory expungement hearing by any means, including by telephone.

(c) If a mandatory expungement hearing is held regarding the subject of a report of child abuse or neglect who is a minor child and the subject is entered into the central registry of child protection cases maintained under section 28-718, the subject may make a subsequent request under subsection (1) of this section or section 28-723.

Source: Laws 1979, LB 505, § 9; Laws 2005, LB 116, § 13; Laws 2007, LB296, § 38; Laws 2014, LB853, § 11; Laws 2015, LB292, § 4.
Effective date August 30, 2015.

ARTICLE 8

OFFENSES RELATING TO MORALS

Section

- 28-801.01. Solicitation of prostitution; penalty; affirmative defense.
28-802. Pandering; penalty.
28-804. Keeping a place of prostitution; penalty.
28-813.01. Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense.
28-831. Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.

28-801.01 Solicitation of prostitution; penalty; affirmative defense.

(1) Any person who solicits another person not his or her spouse to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318, in exchange for money or other thing of value, commits solicitation of prostitution.

(2) Any person convicted of violating subsection (1) of this section shall be punished as follows:

(a) If such person has had no prior convictions, such person shall be guilty of a Class I misdemeanor and pay a fine of not less than two hundred fifty dollars, unless the person solicited is under the age of eighteen years, in which case such person violating this section shall be guilty of a Class IV felony. If the court places such person on probation, such order of probation shall include in its conditions (i) the payment of a fine of not less than two hundred fifty dollars, (ii) that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment, and (iii) that such person shall satisfactorily attend and complete, at his or her own expense, an educational program designed to educate participants on the effect of prostitution on the participants' health, on the person solicited, and on the community; and

(b) If such person has had one or more prior convictions, such person shall be guilty of a Class IV felony and pay a fine of not less than five hundred dollars. If the court places such person on probation, such order of probation shall include in its conditions (i) the payment of a fine of not less than five hundred dollars, (ii) that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment, and (iii) that such person shall satisfactorily attend and complete, at his or her own expense, an educational program designed to educate participants on the effect of prostitution on the participants' health, on the person solicited, and on the community.

(3) It is an affirmative defense to prosecution under this section that such person was a trafficking victim as defined in section 28-830.

Source: Laws 2006, LB 1086, § 8; Laws 2013, LB255, § 3; Laws 2015, LB294, § 9.

Operative date May 20, 2015.

28-802 Pandering; penalty.

(1) A person commits pandering if such person:

- (a) Entices another person to become a prostitute; or
- (b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed; or
- (c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or
- (d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.

(2) Pandering is a Class III felony for a first offense, unless the person being enticed, procured, harbored, or otherwise persuaded to become a prostitute is under the age of eighteen years, in which case pandering is a Class II felony for a first offense. Pandering is a Class II felony for a second or subsequent offense.

Source: Laws 1977, LB 38, § 158; Laws 2012, LB1145, § 1; Laws 2013, LB255, § 4; Laws 2015, LB294, § 10.
Operative date May 20, 2015.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-804 Keeping a place of prostitution; penalty.

(1) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.

(2) Keeping a place of prostitution is a Class IV felony, unless any person using such place for the practice of prostitution is under the age of eighteen years, in which case any person convicted of keeping a place of prostitution shall be guilty of a Class III felony.

Source: Laws 1977, LB 38, § 160; Laws 2013, LB255, § 5; Laws 2015, LB294, § 11.
Operative date May 20, 2015.

28-813.01 Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense.

(1) It shall be unlawful for a person to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02, which has a child, as defined in such section, as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IV felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class IIA felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

(3) It shall be an affirmative defense to a charge made pursuant to this section that:

(a) The visual depiction portrays no person other than the defendant; or

(b)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

Source: Laws 1988, LB 117, § 6; Laws 2003, LB 111, § 1; Laws 2009, LB97, § 15; Laws 2015, LB605, § 45.
Effective date August 30, 2015.

28-831 Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.

(1) Any person who engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class II felony if the actor uses overt force or the threat of force or the trafficking victim has not yet attained the age of sixteen years. Any person who otherwise engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IIA felony.

(2) Any person who engages in labor trafficking or sex trafficking by inflicting or threatening to inflict serious personal injury, as defined in section 28-318, on another person or physically restrains or threatens to physically restrain another person is guilty of a Class IIA felony. Any person who otherwise engages in labor trafficking or sex trafficking is guilty of a Class III felony.

(3) Any person who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section is guilty of a Class IIIA felony.

Source: Laws 2006, LB 1086, § 11; Laws 2013, LB255, § 7; Laws 2014, LB998, § 5; Laws 2015, LB294, § 12.
Operative date August 30, 2015.

ARTICLE 9

**OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS
OF GOVERNMENT OPERATION**

Section

- 28-912. Escape; official detention, defined; knowingly permitting an escape; penalty; defense to prosecution.
28-932. Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; assault; penalty; sentence.

28-912 Escape; official detention, defined; knowingly permitting an escape; penalty; defense to prosecution.

(1) A person commits escape if he or she unlawfully removes himself or herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. Official detention means arrest, detention in or transportation to any facility for custody

of persons under charge or conviction of crime or contempt or for persons alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes. Official detention does not include supervision of probation or parole or constraint incidental to release on bail.

(2) A public servant concerned in detention commits an offense if he or she knowingly permits an escape. Any person who knowingly causes or facilitates an escape commits a Class IV felony.

(3) Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority shall not be a defense to prosecution under this section if the escape is from a prison or other custodial facility or from detention pursuant to commitment by official proceedings. In the case of other detentions, irregularity or lack of jurisdiction shall be a defense only if:

(a) The escape involved no substantial risk of harm to the person or property of anyone other than the detainee; and

(b) The detaining authority did not act in good faith under color of law.

(4) Except as provided in subsections (5) and (6) of this section, escape is a Class IV felony.

(5) Escape is a Class III felony when:

(a) The detainee was under arrest for or detained on a felony charge or following conviction for the commission of an offense; or

(b) A public servant concerned in detention of persons convicted of crime purposely facilitates or permits an escape from a detention facility or from transportation thereto.

(6) Escape is a Class IIA felony when the actor employs force, threat, deadly weapon, or other dangerous instrumentality to effect the escape.

Source: Laws 1977, LB 38, § 197; Laws 2015, LB605, § 46.
Effective date August 30, 2015.

28-932 Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; assault; penalty; sentence.

(1) Any person (a)(i) who is legally confined in a jail or an adult correctional or penal institution, (ii) who is otherwise in legal custody of the Department of Correctional Services, or (iii) who is committed as a dangerous sex offender under the Sex Offender Commitment Act and (b) who intentionally, knowingly, or recklessly causes bodily injury to another person shall be guilty of a Class IIIA felony, except that if a deadly or dangerous weapon is used to commit such assault, he or she shall be guilty of a Class IIA felony.

(2) Sentences imposed under subsection (1) of this section shall be consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this section.

Source: Laws 1982, LB 465, § 6; Laws 1997, LB 364, § 13; Laws 2010, LB771, § 8; Laws 2015, LB605, § 47.
Effective date August 30, 2015.

Cross References

Sex Offender Commitment Act, see section 71-1201.

ARTICLE 10

OFFENSES AGAINST ANIMALS

Section

- 28-1005. Dogfighting, cockfighting, bearbaiting, or pitting an animal against another; prohibited acts; penalty.
- 28-1006. Investigation; arrest; seizure of property; reimbursement of expenses.
- 28-1008. Terms, defined.
- 28-1009. Abandonment; cruel neglect; harassment of a police animal; penalty.
- 28-1011. Violations; liability for expenses.
- 28-1012. Law enforcement officer; powers; immunity; seizure; court powers.
- 28-1012.01. Animal seized; court powers; county attorney; duties; hearing; notice; animal abandoned or cruelly neglected or mistreated; bond or other security; appeal; section, how construed.
- 28-1013. Sections; exemptions.
- 28-1014. Local regulation; authorized.
- 28-1015. Ownership by child; applicability of penalties.
- 28-1016. Game and Parks Commission; Game Law; sections, how construed.
- 28-1019. Conviction; order prohibiting ownership, possession, or residing with animal; duration; violation; penalty; seizure of animal.

28-1005 Dogfighting, cockfighting, bearbaiting, or pitting an animal against another; prohibited acts; penalty.

- (1) No person shall knowingly:
- (a) Promote, engage in, or be employed at dogfighting, cockfighting, bearbaiting, or pitting an animal against another;
- (b) Receive money for the admission of another person to a place kept for such purpose;
- (c) Own, use, train, sell, or possess an animal for such purpose; or
- (d) Permit any act as described in this subsection to occur on any premises owned or controlled by him or her.
- (2) Any person violating subsection (1) of this section shall be guilty of a Class IIIA felony and shall also be subject to section 28-1019.
- (3) No person shall knowingly and willingly be present at and witness as a spectator dogfighting, cockfighting, bearbaiting, or the pitting of an animal against another as prohibited in subsection (1) of this section. Any person who violates any provision of this subsection shall be guilty of a Class IIIA felony and shall also be subject to section 28-1019.

Source: Laws 1988, LB 170, § 3; Laws 2003, LB 273, § 3; Laws 2013, LB329, § 1; Laws 2015, LB605, § 48.
Effective date August 30, 2015.

28-1006 Investigation; arrest; seizure of property; reimbursement of expenses.

- (1) It shall be the duty of the sheriff, a police officer, or the Nebraska State Patrol to make prompt investigation of and arrest for any violation of section 28-1005 or 28-1005.01.
- (2) Any equipment, device, or other property or things involved in any violation of section 28-1005 or 28-1005.01 shall be subject to seizure, and

disposition may be made in accordance with the method of disposition directed for contraband in sections 29-818 and 29-820.

(3) Any animal involved in any violation of section 28-1005 or 28-1005.01 shall be subject to seizure. Distribution or disposition shall be made as provided in section 28-1012.01 and in such manner as the court may direct. The court may give preference to adoption alternatives through humane societies or comparable institutions and to the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year.

(4) In addition to any other sentence given for a violation of section 28-1005 or 28-1005.01, the sentencing court may order the defendant to reimburse a public or private agency for expenses incurred in conjunction with the care, impoundment, or disposal, including adoption, of an animal involved in the violation of section 28-1005 or 28-1005.01. Whenever the court believes that such reimbursement may be a proper sentence or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the expenses incurred. The court may order that reimbursement be made immediately, in specified installments, or within a specified period of time, not to exceed five years after the date of judgment.

Source: Laws 1988, LB 170, § 4; Laws 1997, LB 551, § 1; Laws 2002, LB 82, § 5; Laws 2010, LB252, § 3; Laws 2010, LB712, § 11; Laws 2015, LB360, § 1.

Operative date December 1, 2015.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1008 Terms, defined.

For purposes of sections 28-1008 to 28-1017, 28-1019, and 28-1020:

(1) Abandon means to leave any animal in one's care, whether as owner or custodian, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

(2) Animal means any vertebrate member of the animal kingdom. Animal does not include an uncaptured wild creature or a livestock animal as defined in section 54-902;

(3) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal;

(4) Cruelly neglect means to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

(5) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;

(6) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or

village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes a special investigator appointed as a deputy state sheriff as authorized pursuant to section 81-201 while acting within the authority of the Director of Agriculture under the Commercial Dog and Cat Operator Inspection Act;

(7) Mutilation means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices;

(8) Owner or custodian means any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person;

(9) Police animal means a horse or dog owned or controlled by the State of Nebraska or any county, city, or village for the purpose of assisting a law enforcement officer in the performance of his or her official enforcement duties;

(10) Repeated beating means intentional successive strikes to an animal by a person resulting in serious bodily injury or death to the animal;

(11) Serious injury or illness includes any injury or illness to any animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ; and

(12) Torture means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

Source: Laws 1990, LB 50, § 1; Laws 1995, LB 283, § 2; Laws 2003, LB 273, § 4; Laws 2006, LB 856, § 11; Laws 2007, LB227, § 1; Laws 2008, LB764, § 2; Laws 2008, LB1055, § 2; Laws 2009, LB494, § 1; Laws 2010, LB865, § 13; Laws 2012, LB721, § 2; Laws 2015, LB360, § 2.

Operative date December 1, 2015.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1009 Abandonment; cruel neglect; harassment of a police animal; penalty.

(1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony.

(2)(a) Except as provided in subdivision (b) of this subsection, a person who cruelly mistreats an animal is guilty of a Class I misdemeanor for the first offense and a Class IIIA felony for any subsequent offense.

(b) A person who cruelly mistreats an animal is guilty of a Class IIIA felony if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of the animal.

(3) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties. Harassment of a police animal is a Class IV misdemeanor unless the harassment is the proximate cause of the death of the police animal, in which case it is a Class IIIA felony.

(4) A person convicted of a Class I misdemeanor under this section may also be subject to section 28-1019. A person convicted of a Class IIIA felony under this section shall also be subject to section 28-1019.

Source: Laws 1990, LB 50, § 2; Laws 1995, LB 283, § 3; Laws 2002, LB 82, § 6; Laws 2003, LB 273, § 5; Laws 2007, LB227, § 2; Laws 2013, LB329, § 3; Laws 2014, LB674, § 1; Laws 2015, LB605, § 49.

Effective date August 30, 2015.

28-1011 Violations; liability for expenses.

(1) In addition to any other sentence given for a violation of section 28-1009 or 28-1010, the sentencing court may order the defendant to reimburse a public or private agency for any unreimbursed expenses incurred in conjunction with the care, impoundment, seizure, or disposal of an animal involved in the violation of such section. Whenever the court believes that such reimbursement may be a proper sentence or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the expenses incurred. The court may order that reimbursement be made immediately, in specified installments, or within a specified period of time, not to exceed five years after the date of judgment.

(2) Even if reimbursement for expenses is not ordered under subsection (1) of this section, the defendant shall be liable for all unreimbursed expenses incurred by a public or private agency in conjunction with the care, impoundment, seizure, or disposal of an animal. The expenses shall be a lien upon the animal.

Source: Laws 1990, LB 50, § 5; Laws 1997, LB 551, § 2; Laws 2015, LB360, § 3.

Operative date December 1, 2015.

28-1012 Law enforcement officer; powers; immunity; seizure; court powers.

(1) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.

(2) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner or custodian as prescribed in sections 29-422 to 29-429.

(3) Any equipment, device, or other property or things involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct. Any animal involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure. Distribution or disposition shall be made under section 28-1012.01 as the court may direct.

(4) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

Source: Laws 1990, LB 50, § 4; Laws 1997, LB 551, § 3; Laws 2002, LB 82, § 7; Laws 2010, LB712, § 12; Laws 2015, LB360, § 4.
Operative date December 1, 2015.

28-1012.01 Animal seized; court powers; county attorney; duties; hearing; notice; animal abandoned or cruelly neglected or mistreated; bond or other security; appeal; section, how construed.

(1) Any animal seized under a search warrant or validly seized without a warrant may be kept on the property of the owner or custodian by the law enforcement officer seizing the animal. When a criminal complaint has been filed in connection with a seized animal, the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the animal and to determine any rights therein, including questions respecting the title, possession, control, and disposition thereof as provided in this section.

(2) Within seven days after the date an animal has been seized pursuant to section 28-1006 or 28-1012, the county attorney of the county where the animal was seized shall file an application with the court having appropriate jurisdiction for a hearing to determine the disposition and the cost for the care of the animal. Notice of such hearing shall be given to the owner or custodian from whom such animal was seized and to any holder of a lien or security interest of record in such animal specifying the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such animal was seized. Such publication shall be made after application and order of the court. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court.

(3) If the court finds that probable cause exists that an animal has been abandoned or cruelly neglected or mistreated, the court may:

(a) Order immediate forfeiture of the animal to the agency that took custody of the animal and authorize appropriate disposition of the animal including adoption, donation to a suitable shelter, humane destruction, or any other manner of disposition approved by the court. The court may consider adoption alternatives through humane societies or comparable institutions and the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year;

(b) Issue an order to the owner or custodian setting forth the conditions under which custody of the animal shall be returned to the owner or custodian from whom the animal was seized or to any other person claiming an interest in the animal. Such order may include any management actions deemed necessary and prudent by the court, including reducing the number of animals

harbored or owned by the owner or custodian by humane destruction or forfeiture and securing necessary care, including veterinary care, sufficient for the maintenance of any remaining animals; or

(c) Order the owner or custodian from whom the animal was seized to post a bond or other security or to otherwise order payment in an amount that is sufficient to reimburse all reasonable expenses, as determined by the court, for the care of the animal including veterinary care incurred by the agency from the date of seizure and necessitated by the possession of the animal. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent thirty-day period, if any, shall be due on or before the tenth day of such period. The bond or security shall be placed with, or payments ordered under this subdivision shall be paid to, the agency that took custody of the animal. The agency shall provide an accounting of expenses to the court when the animal is no longer in the custody of the agency or upon request by the court. The county attorney of the county where the animal was seized may apply to the court for a subsequent hearing under this section at any time. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court. When all expenses covered by the bond or security are exhausted and subsequent bond or security has not been posted, or if a person becomes delinquent in his or her payments for the expenses of the animal, the animal shall be forfeited to the agency.

(4) If custody of an animal is returned to the owner or custodian prior to seizure, any proceeds of a bond or security or any payment or portion of payment ordered under this section not used for the care of the animal during the time the animal was held by the agency shall be returned to the owner or custodian.

(5) Nothing in this section shall prevent the humane destruction of a seized animal at any time as determined necessary by a licensed veterinarian or as authorized by court order.

(6) An appeal may be filed within ten days after a hearing held under this section. Any person filing an appeal shall post a bond or security sufficient to pay reasonable costs of care of the animal for thirty days. Such bond or surety shall be required for each succeeding thirty-day period until the appeal is final.

(7) If the owner or custodian from whom the animal was seized is found not guilty in an associated criminal proceeding, all funds paid for the expenses of the animal remaining after the actual expenses incurred by the agency have been paid shall be returned to the owner or custodian.

(8) This section shall not preempt any ordinance of a city of the metropolitan or primary class.

Source: Laws 2015, LB360, § 5.

Operative date December 1, 2015.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1013 Sections; exemptions.

Sections 28-1008 to 28-1017 and 28-1019 shall not apply to:

- (1) Care or treatment of an animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act that occurs within the scope of his or her employment, that occurs while acting in his or her professional capacity, or that conforms to commonly accepted veterinary practices;
- (2) Commonly accepted care or treatment of a police animal by a law enforcement officer in the normal course of his or her duties;
- (3) Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2010;
- (4) Commonly accepted practices of hunting, fishing, or trapping;
- (5) Humane killing of an animal by the owner or by his or her agent or a veterinarian upon the owner's request;
- (6) Use of reasonable force against an animal, other than a police animal, which is working, including killing, capture, or restraint, if the animal is outside the owned or rented property of its owner or custodian and is injuring or posing an immediate threat to any person or other animal;
- (7) Killing of house or garden pests; and
- (8) Commonly accepted animal training practices.

Source: Laws 1990, LB 50, § 6; Laws 1995, LB 283, § 4; Laws 2003, LB 273, § 6; Laws 2007, LB463, § 1127; Laws 2008, LB764, § 5; Laws 2008, LB1055, § 4; Laws 2009, LB494, § 2; Laws 2010, LB865, § 14; Laws 2015, LB360, § 6.
Operative date December 1, 2015.

Cross References

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

28-1014 Local regulation; authorized.

Any city, village, or county may adopt and promulgate rules, regulations, and ordinances which are not inconsistent with the provisions of sections 28-1008 to 28-1017, 28-1019, and 28-1020 for the protection of the public, public health, and animals within its jurisdiction.

Source: Laws 1990, LB 50, § 7; Laws 2003, LB 273, § 7; Laws 2008, LB764, § 8; Laws 2008, LB1055, § 5; Laws 2009, LB494, § 3; Laws 2015, LB360, § 7.
Operative date December 1, 2015.

28-1015 Ownership by child; applicability of penalties.

When an animal is owned by a minor child, the parent of such minor child with whom the child resides or legal guardian with whom the child resides shall be subject to the penalties provided under sections 28-1008 to 28-1017, 28-1019, and 28-1020 if the animal is abandoned or cruelly neglected.

Source: Laws 1990, LB 50, § 8; Laws 2003, LB 273, § 8; Laws 2008, LB764, § 9; Laws 2008, LB1055, § 6; Laws 2009, LB494, § 4; Laws 2015, LB360, § 8.
Operative date December 1, 2015.

28-1016 Game and Parks Commission; Game Law; sections, how construed.

Nothing in sections 28-1008 to 28-1017, 28-1019, and 28-1020 shall be construed as amending or changing the authority of the Game and Parks Commission as established in the Game Law or to prohibit any conduct authorized or permitted by such law.

Source: Laws 1990, LB 50, § 9; Laws 2003, LB 273, § 9; Laws 2008, LB764, § 10; Laws 2008, LB1055, § 7; Laws 2009, LB494, § 5; Laws 2015, LB360, § 9.
Operative date December 1, 2015.

Cross References

Game Law, see section 37-201.

28-1019 Conviction; order prohibiting ownership, possession, or residing with animal; duration; violation; penalty; seizure of animal.

(1)(a) If a person is convicted of a Class IV felony under section 28-1005 or 28-1009, the sentencing court shall order such person not to own, possess, or reside with any animal for at least five years after the date of conviction, but such time restriction shall not exceed fifteen years. Any person violating such court order shall be guilty of a Class I misdemeanor.

(b) If a person is convicted of a Class I misdemeanor under section 28-1005.01 or 28-1009 or a Class III misdemeanor under section 28-1010, the sentencing court may order such person not to own, possess, or reside with any animal after the date of conviction, but such time restriction, if any, shall not exceed five years. Any person violating such court order shall be guilty of a Class IV misdemeanor.

(c) Any animal involved in a violation of a court order under subdivision (a) or (b) of this subsection shall be subject to seizure by law enforcement. Distribution or disposition shall be made under section 28-1012.01.

(2) This section shall not apply to any person convicted under section 28-1005, 28-1005.01, or 28-1009 if a licensed physician confirms in writing that ownership or possession of or residence with an animal is essential to the health of such person.

Source: Laws 2008, LB1055, § 3; Laws 2010, LB252, § 5; Laws 2010, LB712, § 13; Laws 2014, LB674, § 2; Laws 2015, LB360, § 10.
Operative date December 1, 2015.

ARTICLE 11

GAMBLING

Section

- 28-1102. Promoting gambling, first degree; penalty.
28-1103. Promoting gambling, second degree; penalty.
28-1104. Promoting gambling, third degree; penalty.

28-1102 Promoting gambling, first degree; penalty.

(1) A person commits the offense of promoting gambling in the first degree if he or she knowingly advances or profits from unlawful gambling activity by:

(a) Engaging in bookmaking to the extent that he or she receives or accepts in any one day one or more bets totaling one thousand five hundred dollars or more; or

(b) Receiving, in connection with any unlawful gambling scheme or enterprise, one thousand five hundred dollars or more of money played in the scheme or enterprise in any one day.

(2) Promoting gambling in the first degree is, for the first offense, a Class I misdemeanor, for the second offense, a Class IV felony, and for the third and all subsequent offenses, a Class III felony. No person shall be charged with a second or subsequent offense under this section unless the prior offense or offenses occurred after August 24, 1979.

Source: Laws 1977, LB 38, § 218; Laws 1979, LB 152, § 2; Laws 2015, LB605, § 50.
Effective date August 30, 2015.

28-1103 Promoting gambling, second degree; penalty.

(1) A person commits the offense of promoting gambling in the second degree if he or she knowingly advances or profits from any unlawful gambling activity by:

(a) Engaging in bookmaking to the extent that he or she receives or accepts in any one day one or more bets totaling less than one thousand five hundred dollars;

(b) Receiving, in connection with any unlawful gambling scheme or enterprise, less than one thousand five hundred dollars of money played in the scheme or enterprise in any one day; or

(c) Betting something of value in an amount of five hundred dollars or more with one or more persons in one day.

(2) Promoting gambling in the second degree is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 219; Laws 1979, LB 152, § 3; Laws 2015, LB605, § 51.
Effective date August 30, 2015.

28-1104 Promoting gambling, third degree; penalty.

(1) A person commits the offense of promoting gambling in the third degree if he or she knowingly participates in unlawful gambling as a player by betting less than five hundred dollars in any one day.

(2) Promoting gambling in the third degree is a Class IV misdemeanor.

Source: Laws 1977, LB 38, § 220; Laws 1979, LB 152, § 4; Laws 2015, LB605, § 52.
Effective date August 30, 2015.

ARTICLE 12

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

Section

28-1212.03. Stolen firearm; prohibited acts; violation; penalty.

28-1222. Using explosives to commit a felony; penalty.

28-1224. Using explosives to kill or injure any person; penalty.

28-1212.03 Stolen firearm; prohibited acts; violation; penalty.

Any person who possesses, receives, retains, or disposes of a stolen firearm knowing that it has been or believing that it has been stolen shall be guilty of a

Class IIA felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

Source: Laws 1991, LB 477, § 1; Laws 2009, LB63, § 19; Laws 2015, LB605, § 53.

Effective date August 30, 2015.

28-1222 Using explosives to commit a felony; penalty.

(1) Any person who uses an explosive material or destructive device to commit any felony which may be prosecuted in this state or who possesses an explosive during the commission of any felony which may be prosecuted in this state commits the offense of using explosives to commit a felony.

(2) Using explosives to commit a felony is a Class IIA felony.

(3) In the case of a second or subsequent conviction under this section, using explosives to commit a felony is a Class II felony.

Source: Laws 1977, LB 38, § 254; Laws 2015, LB605, § 54.

Effective date August 30, 2015.

28-1224 Using explosives to kill or injure any person; penalty.

(1) Any person who uses explosive materials or destructive devices to intentionally kill, injure, or intimidate any individual commits the offense of using explosives to kill or injure any person.

(2) Except as provided in subsection (3) or (4) of this section, using explosives to kill or injure any person is a Class IIA felony.

(3) If personal injury results, using explosives to kill or injure any person is a Class II felony.

(4) If death results, using explosives to kill or injure any person shall be punished as for conviction of murder in the first degree.

Source: Laws 1977, LB 38, § 256; Laws 2015, LB605, § 55.

Effective date August 30, 2015.

ARTICLE 13

MISCELLANEOUS OFFENSES

(p) COMPUTERS

Section

28-1344. Unlawful acts; depriving or obtaining property or services; penalties.

28-1345. Unlawful acts; harming or disrupting operations; penalties.

(s) PUBLIC PROTECTION ACT

28-1356. Violation; penalty.

(p) COMPUTERS

28-1344 Unlawful acts; depriving or obtaining property or services; penalties.

(1) Any person who intentionally accesses or causes to be accessed, directly or indirectly, any computer, computer system, computer software, or computer network without authorization or who, having accessed any computer, computer system, computer software, or computer network with authorization, knowingly and intentionally exceeds the limits of such authorization shall be guilty of

an offense if he or she intentionally: (a) Deprives another of property or services; or (b) obtains property or services of another.

(2) The offense constitutes a Class III felony when the value of the property or services involved is five thousand dollars or more.

(3) The offense constitutes a Class IV felony when the value of the property or services involved is one thousand five hundred dollars or more, but less than five thousand dollars.

(4) The offense constitutes a Class I misdemeanor when the value of the property or services involved is five hundred dollars or more, but less than one thousand five hundred dollars.

(5) The offense constitutes a Class II misdemeanor when the value of the property or services involved is less than five hundred dollars.

Source: Laws 1985, LB 371, § 3; Laws 1991, LB 135, § 6; Laws 2015, LB605, § 56.

Effective date August 30, 2015.

28-1345 Unlawful acts; harming or disrupting operations; penalties.

(1) Any person who accesses or causes to be accessed any computer, computer system, computer software, or computer network without authorization or who, having accessed any computer, computer system, computer software, or computer network with authorization, knowingly and intentionally exceeds the limits of such authorization shall be guilty of an offense if he or she intentionally: (a) Alters, damages, deletes, or destroys any computer, computer system, computer software, computer network, computer program, data, or other property; (b) disrupts the operation of any computer, computer system, computer software, or computer network; or (c) distributes a destructive computer program with intent to damage or destroy any computer, computer system, computer network, or computer software.

(2) The offense constitutes a Class III felony when the value of the loss caused is five thousand dollars or more.

(3) The offense constitutes a Class IV felony when the value of the loss caused is one thousand five hundred dollars or more, but less than five thousand dollars.

(4) The offense constitutes a Class I misdemeanor when the value of the loss caused is five hundred dollars or more, but less than one thousand five hundred dollars.

(5) The offense constitutes a Class II misdemeanor when the value of the loss caused is less than five hundred dollars.

Source: Laws 1985, LB 371, § 4; Laws 1991, LB 135, § 7; Laws 2015, LB605, § 57.

Effective date August 30, 2015.

(s) PUBLIC PROTECTION ACT

28-1356 Violation; penalty.

(1) A person who violates section 28-1355 shall be guilty of a Class III felony; however, such person shall be guilty of a Class IB felony if the violation is based upon racketeering activity which is punishable as a Class IA or IB felony.

(2) In lieu of the fine authorized by section 28-105, any person convicted of engaging in conduct in violation of section 28-1355, through which pecuniary value was derived, or by which personal injury or property damage or other loss was caused, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred. Any fine collected under this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2009, LB155, § 6; Laws 2015, LB268, § 10.
Effective date August 30, 2015.

**ARTICLE 14
NONCODE PROVISIONS**

(c) TOBACCO, VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS

Section

28-1429.03. Self-service display; restrictions on use; violation; penalty.

(f) DRUGS

28-1437. Repealed. Laws 2015, LB 37, § 93.

28-1438. Repealed. Laws 2015, LB 37, § 93.

(k) CHILD PORNOGRAPHY PREVENTION ACT

28-1463.05. Visual depiction of sexually explicit acts related to possession; violation; penalty.

(c) TOBACCO, VAPOR PRODUCTS, OR ALTERNATIVE
NICOTINE PRODUCTS

28-1429.03 Self-service display; restrictions on use; violation; penalty.

(1) Except as provided in subsection (2) of this section and section 28-1429.02, it shall be unlawful to sell or distribute cigarettes, cigars, vapor products, alternative nicotine products, or tobacco in any form whatever through a self-service display. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second or subsequent offense within a twelve-month period, the court shall order a six-month suspension of the license issued under section 28-1421.

(2) Cigarettes, cigars, vapor products, alternative nicotine products, or tobacco in any form whatever may be sold or distributed in a self-service display that is located in a tobacco specialty store or cigar shop as defined in section 53-103.08.

Source: Laws 2014, LB863, § 22; Laws 2015, LB118, § 1.
Effective date February 27, 2015.

(f) DRUGS

28-1437 Repealed. Laws 2015, LB 37, § 93.

28-1438 Repealed. Laws 2015, LB 37, § 93.

(k) CHILD PORNOGRAPHY PREVENTION ACT

28-1463.05 Visual depiction of sexually explicit acts related to possession; violation; penalty.

(1) It shall be unlawful for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IIIA felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class IIA felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

Source: Laws 1985, LB 668, § 4; Laws 1986, LB 788, § 2; Laws 2004, LB 943, § 7; Laws 2009, LB97, § 20; Laws 2015, LB605, § 58.
Effective date August 30, 2015.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

ARTICLE 15

NEBRASKA JUSTICE REINVESTMENT WORKING GROUP

Section
28-1501. Transferred to section 50-434.

28-1501 Transferred to section 50-434.



CHAPTER 29 CRIMINAL PROCEDURE

Article.

4. Warrant and Arrest of Accused. 29-431.
8. Search and Seizure.
 - (a) Search and Seizure. 29-812, 29-815.
 - (b) Disposition of Seized Property. 29-818.
16. Prosecution on Information. 29-1602, 29-1603.
18. Motions and Issues on Indictment. 29-1816, 29-1822.
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 - (a) Judgment on Conviction. 29-2204 to 29-2204.03.
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23. Review of Judgments in Criminal Cases. 29-2308.
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25. Special Procedure in Cases of Homicide. 29-2501 to 29-2546.
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 - (c) County Revenue Assistance Act. 29-3920 to 29-3930.
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 - (a) Sex Offender Registration Act. 29-4001.01 to 29-4011.
41. DNA Testing.
 - (b) DNA Testing Act. 29-4120.

ARTICLE 4

WARRANT AND ARREST OF ACCUSED

Section

29-431. Infraction, defined.

29-431 Infraction, defined.

As used in sections 28-416, 29-422, 29-424, 29-425, 29-431 to 29-434, 48-1231, and 53-173, unless the context otherwise requires, infraction means the violation of any law, ordinance, order, rule, or regulation, not including those related to traffic, which is not otherwise declared to be a misdemeanor or a felony. Infraction includes violations of section 60-6,267.

Source: Laws 1978, LB 808, § 1; Laws 1979, LB 534, § 1; Laws 1983, LB 306, § 1; Laws 1993, LB 370, § 14; Laws 2010, LB884, § 1; Laws 2015, LB330, § 1.

Operative date May 28, 2015.

Cross References

Child passenger restraint system, violation, see sections 60-6,267 and 60-6,268.

ARTICLE 8

SEARCH AND SEIZURE

(a) SEARCH AND SEIZURE

Section

29-812. Search warrant; issuance.

29-815. Search warrant; executed and returned; inventory required.

(b) DISPOSITION OF SEIZED PROPERTY

29-818. Seized property; custody.

(a) SEARCH AND SEIZURE

29-812 Search warrant; issuance.

A search warrant authorized by sections 29-812 to 29-821 may be issued by any judge of the county court, district court, Court of Appeals, or Supreme Court for execution anywhere within the State of Nebraska or for service upon any publicly or privately held corporation, partnership, or other legal entity located within or outside the State of Nebraska. A similar search warrant authorized by such sections may be issued, subject to section 24-519, by any clerk magistrate within the county in which the property sought is located.

Source: Laws 1963, c. 161, § 1, p. 570; Laws 1973, LB 226, § 17; Laws 1974, LB 735, § 2; Laws 1982, LB 928, § 24; Laws 1984, LB 13, § 56; Laws 1986, LB 529, § 30; Laws 1991, LB 732, § 72; Laws 1992, LB 1059, § 22; Laws 2006, LB 1115, § 19; Laws 2015, LB294, § 13.

Operative date May 20, 2015.

Cross References

Nebraska Liquor Control Act, issuance under, see section 53-1,108 et seq.

29-815 Search warrant; executed and returned; inventory required.

(1) The warrant must be executed and returned within ten days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and the receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken if they are present, or in the presence of at least one credible witness other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge or magistrate shall deliver a copy of the inventory upon request to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(2) The return and inventory required by subsection (1) of this section may be submitted to the magistrate or judge in person or by facsimile or other electronic means.

Source: Laws 1963, c. 161, § 4, p. 572; Laws 2015, LB294, § 14.

Operative date May 20, 2015.

Cross References

Fees for service, see section 33-117.

(b) DISPOSITION OF SEIZED PROPERTY

29-818 Seized property; custody.

Except for animals as provided in section 28-1012.01, property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same, unless otherwise directed by the judge or magistrate, and shall be so kept so long as necessary for the purpose of being produced as evidence in any trial. Property seized may not be taken from the officer having it in custody by replevin or other writ so long as it is or may be required as evidence in any trial, nor may it be so taken in any event where a complaint has been filed in connection with which the property was or may be used as evidence, and the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the property or funds and to determine rights therein, including questions respecting the title, possession, control, and disposition thereof. This section shall not preempt, and shall not be construed to preempt, any ordinance of a city of the metropolitan or primary class.

Source: Laws 1963, c. 161, § 7, p. 573; Laws 2010, LB712, § 14; Laws 2013, LB423, § 2; Laws 2015, LB360, § 11.
Operative date December 1, 2015.

Cross References

Seizure of vehicle and component parts, see section 60-2608.

ARTICLE 16

PROSECUTION ON INFORMATION

Section

- 29-1602. Information; by whom filed and subscribed; names of witnesses; endorsement.
29-1603. Allegations; how made; joinder of offenses; rights of defendant.

29-1602 Information; by whom filed and subscribed; names of witnesses; endorsement.

All informations shall be filed in the court having jurisdiction of the offense specified in the informations, by the prosecuting attorney of the proper county as informant. The prosecuting attorney shall subscribe his or her name thereto and endorse thereon the names of the witnesses known to him or her at the time of filing. After the information has been filed, the prosecuting attorney shall endorse on the information the names of such other witnesses as shall then be known to him or her as the court in its discretion may prescribe.

Source: Laws 1885, c. 108, § 2, p. 397; R.S.1913, § 9063; Laws 1915, c. 164, § 1, p. 335; C.S.1922, § 10087; C.S.1929, § 29-1602; R.S. 1943, § 29-1602; Laws 2002, Third Spec. Sess., LB 1, § 4; Laws 2015, LB268, § 11.
Effective date August 30, 2015.

29-1603 Allegations; how made; joinder of offenses; rights of defendant.

(1) All informations shall be in writing and signed by the county attorney, complainant, or some other person, and the offenses charged in the informa-

tions shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases.

(2) Different offenses and different degrees of the same offense may be joined in one information, in all cases in which the same might by different counts be joined in one indictment; and in all cases a defendant or defendants shall have the same right, as to proceedings therein, as the defendant or defendants would have if prosecuted for the same offense upon indictment.

Source: Laws 1885, c. 108, § 3, p. 397; R.S.1913, § 9064; C.S.1922, § 10088; C.S.1929, § 29-1603; R.S.1943, § 29-1603; Laws 2002, Third Spec. Sess., LB 1, § 5; Laws 2011, LB669, § 22; Laws 2015, LB268, § 12.

Effective date August 30, 2015.

ARTICLE 18

MOTIONS AND ISSUES ON INDICTMENT

Section

29-1816. Arraignment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect.

29-1822. Mental incompetency of accused after crime commission; effect.

29-1816 Arraignment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect.

(1)(a) The accused may be arraigned in county court or district court:

(i) If the accused was eighteen years of age or older when the alleged offense was committed;

(ii) If the accused was younger than eighteen years of age and was fourteen years of age or older when an alleged offense punishable as a Class I, IA, IB, IC, ID, II, or IIA felony was committed;

(iii) If the alleged offense is a traffic offense as defined in section 43-245; or

(iv) Until January 1, 2017, if the accused was seventeen years of age when an alleged offense described in subdivision (1) of section 43-247 was committed.

(b) Arraignment in county court or district court shall be by reading to the accused the complaint or information, unless the reading is waived by the accused when the nature of the charge is made known to him or her. The accused shall then be asked whether he or she is guilty or not guilty of the offense charged. If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he or she shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made.

(2) At the time of the arraignment, the county court or district court shall advise the accused, if the accused was younger than eighteen years of age at the time the alleged offense was committed, that the accused may move the county court or district court at any time not later than thirty days after arraignment, unless otherwise permitted by the court for good cause shown, to waive jurisdiction in such case to the juvenile court for further proceedings under the Nebraska Juvenile Code. This subsection does not apply if the case was transferred to county court or district court from juvenile court.

(3) For motions to transfer a case from the county court or district court to juvenile court:

(a) The county court or district court shall schedule a hearing on such motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The accused shall be represented by an attorney. The criteria set forth in section 43-276 shall be considered at such hearing. After considering all the evidence and reasons presented by both parties, the case shall be transferred to juvenile court unless a sound basis exists for retaining the case in county court or district court; and

(b) The county court or district court shall set forth findings for the reason for its decision. If the county court or district court determines that the accused should be transferred to the juvenile court, the complete file in the county court or district court shall be transferred to the juvenile court and the complaint, indictment, or information may be used in place of a petition therein. The county court or district court making a transfer shall order the accused to be taken forthwith to the juvenile court and designate where the juvenile shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

(4) When the accused was younger than eighteen years of age when an alleged offense was committed, the county attorney or city attorney shall proceed under section 43-274.

Source: G.S.1873, c. 58, § 448, p. 822; R.S.1913, § 9092; C.S.1922, § 10117; Laws 1925, c. 105, § 1, p. 294; C.S.1929, § 29-1815; R.S.1943, § 29-1816; Laws 1947, c. 103, § 1(1), p. 291; Laws 1974, LB 620, § 6; Laws 1975, LB 288, § 2; Laws 1987, LB 34, § 1; Laws 2008, LB1014, § 16; Laws 2010, LB800, § 5; Laws 2014, LB464, § 4; Laws 2015, LB265, § 1; Laws 2015, LB605, § 59.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB265, section 1, with LB605, section 59, to reflect all amendments.

Note: Changes made by LB265 became operative August 30, 2015. Changes made by LB605 became effective August 30, 2015.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

29-1822 Mental incompetency of accused after crime commission; effect.

A person who becomes mentally incompetent after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the incompetency. If, after the verdict of guilty and before judgment is pronounced, such person becomes mentally incompetent, then no judgment shall be given while such incompetency continues.

Source: G.S.1873, c. 58, § 454, p. 823; R.S.1913, § 9098; C.S.1922, § 10123; C.S.1929, § 29-1821; R.S.1943, § 29-1822; Laws 1986, LB 1177, § 7; Laws 2015, LB268, § 13.
Effective date August 30, 2015.

ARTICLE 19

PREPARATION FOR TRIAL

(c) DISCOVERY

Section

29-1926. Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty.

(c) DISCOVERY

29-1926 Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty.

(1)(a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need, the court shall order the taking of a videotape deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child. If the court orders a videotape deposition, the court shall:

(i) Designate the time and place for taking the deposition. The deposition may be conducted in the courtroom, the judge's chambers, or any other location suitable for videotaping;

(ii) Assure adequate time for the defense attorney to complete discovery before taking the deposition; and

(iii) Preside over the taking of the videotape deposition in the same manner as if the child were called as a witness for the prosecution during the course of the trial.

(b) Unless otherwise required by the court, the deposition shall be conducted in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness or a counselor or other person with whom the child is familiar. Such parent, guardian, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony.

(c) At any time subsequent to the taking of the original videotape deposition and upon sufficient cause shown, the court shall order the taking of additional videotape depositions to be admitted at the time of the trial.

(d) If the child testifies at trial in person rather than by videotape deposition, the taking of the child's testimony may, upon request of the prosecuting attorney and upon a showing of compelling need, be conducted in camera.

(e) Unless otherwise required by the court, the child shall testify in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness or a counselor or other person with whom the child is familiar. Such parent, guardian, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony. Unless waived by the defendant, all persons in the room shall be visible on camera except the camera operator.

(f) If deemed necessary to preserve the constitutionality of the child's testimony, the court may direct that during the testimony the child shall at all times be in a position to see the defendant live or on camera.

(g) For purposes of this section, child means a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial.

(h) Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to

facilitate and preserve a child's testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial videotape deposition, in camera live testimony, in camera videotape testimony, or any other accommodation, the court shall make particularized findings on the record of:

- (i) The nature of the offense;
- (ii) The significance of the child's testimony to the case;
- (iii) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;
- (iv) The child's age;
- (v) The child's psychological maturity and understanding; and
- (vi) The nature, degree, and duration of potential injury to the child from testifying.

(i) The court may order an independent examination by a psychologist or psychiatrist if the defense attorney requests the opportunity to rebut the showing of compelling need produced by the prosecuting attorney. Such examination shall be conducted in the child's county of residence.

(j) After a finding of compelling need by the court, neither party may call the child witness to testify as a live witness at the trial before the jury unless that party demonstrates that the compelling need no longer exists.

(k) Nothing in this section shall limit the right of access of the media or the public to open court.

(l) Nothing in this section shall preclude discovery by the defendant as set forth in section 29-1912.

(m) The Supreme Court may adopt and promulgate rules of procedure to administer this section, which rules shall not be in conflict with laws governing such matters.

(2)(a) No custodian of a videotape of a child victim or child witness alleging, explaining, denying, or describing an act of sexual assault pursuant to section 28-319, 28-319.01, or 28-320.01 or child abuse pursuant to section 28-707 as part of an investigation or evaluation of the abuse or assault shall release or use a videotape or copies of a videotape or consent, by commission or omission, to the release or use of a videotape or copies of a videotape to or by any other party without a court order, notwithstanding the fact that the child victim or child witness has consented to the release or use of the videotape or that the release or use is authorized under law, except as provided in section 28-730 or pursuant to an investigation under the Office of Inspector General of Nebraska Child Welfare Act. Any custodian may release or consent to the release or use of a videotape or copies of a videotape to law enforcement agencies or agencies authorized to prosecute such abuse or assault cases on behalf of the state.

(b) The court order may govern the purposes for which the videotape may be used, the reproduction of the videotape, the release of the videotape to other persons, the retention and return of copies of the videotape, and any other requirements reasonably necessary for the protection of the privacy and best interests of the child victim or child witness.

(c) Pursuant to section 29-1912, the defendant described in the videotape may petition the district court in the county where the alleged offense took place or where the custodian of the videotape resides for an order releasing to the defendant a copy of the videotape.

(d) Any person who releases or uses a videotape except as provided in this section shall be guilty of a Class I misdemeanor.

Source: Laws 1988, LB 90, § 3; Laws 1997, LB 643, § 1; Laws 2006, LB 1199, § 12; Laws 2015, LB347, § 1.
Effective date August 30, 2015.

Cross References

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

ARTICLE 20

TRIAL

Section

- 29-2004. Jury; how drawn and selected; alternate jurors.
29-2005. Peremptory challenges.
29-2006. Challenges for cause.
29-2011.02. Witnesses; refusal to testify or provide information; court order for testimony or information; limitation on use.
29-2011.03. Order for testimony or information of witness; request; when.
29-2020. Bill of exceptions by defendant; request; procedure.
29-2027. Verdict in trials for murder; conviction by confession; sentencing procedure.

29-2004 Jury; how drawn and selected; alternate jurors.

(1) All parties may stipulate that the jury may be selected up to thirty-one days prior to the date of trial. The stipulation must be unanimous among all parties and evidenced by a joint stipulation to the county court.

(2) In all cases, except as may be otherwise expressly provided, the accused shall be tried by a jury drawn, summoned, and impaneled according to provisions of the code of civil procedure, except that whenever in the opinion of the court the trial is likely to be a protracted one, the court may, immediately after the jury is impaneled and sworn, direct the calling of one or two additional jurors, to be known as alternate jurors. Such jurors shall be drawn from the same source and in the same manner, and have the same qualifications as regular jurors, and be subject to examination and challenge as such jurors, except that each party shall be allowed one peremptory challenge to each alternate juror. The alternate jurors shall take the proper oath or affirmation, shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, and shall attend at all times upon the trial of the cause in company with the regular jurors. They shall obey all orders and admonitions of the court, and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors and shall be discharged upon the final submission of the cause to the jury. If, before the final submission of the cause a regular juror dies or is discharged, the court shall order the alternate juror, if there is but one, to take his or her place in the jury box. If there are two alternate jurors the court shall select one by lot, who shall then take his or her place in the jury

box. After an alternate juror is in the jury box he or she shall be subject to the same rules as a regular juror.

Source: G.S.1873, c. 58, § 466, p. 825; R.S.1913, § 9107; C.S.1922, § 10132; C.S.1929, § 29-2004; Laws 1933, c. 38, § 1, p. 242; C.S.Supp.,1941, § 29-2004; R.S.1943, § 29-2004; Laws 1996, LB 1249, § 2; Laws 2002, Third Spec. Sess., LB 1, § 6; Laws 2015, LB268, § 14.
Effective date August 30, 2015.

Cross References

Change of venue, criminal case pending in county with population of four thousand or less without adequate facilities for jury trials, see section 25-412.01.

For drawing and selecting of jurors, see Chapter 25, article 16.

29-2005 Peremptory challenges.

Every person arraigned for any crime punishable by imprisonment for life shall be admitted on his or her trial to a peremptory challenge of twelve jurors. Every person arraigned for any offense that may be punishable by imprisonment for a term exceeding eighteen months and less than life shall be admitted to a peremptory challenge of six jurors. In all other criminal trials, the defendant shall be allowed a peremptory challenge of three jurors. The attorney prosecuting on behalf of the state shall be admitted to a peremptory challenge of twelve jurors in all cases when the offense is punishable by imprisonment for life, six jurors when the offense is punishable by imprisonment for a term exceeding eighteen months and less than life, and three jurors in all other cases. In each case for which alternate jurors are called, as provided in section 29-2004, both the defendant and the attorney prosecuting for the state shall each be allowed one added peremptory challenge to each alternate juror.

Source: G.S.1873, c. 58, § 467, p. 826; R.S.1913, § 9108; Laws 1915, c. 166, § 1, p. 337; C.S.1922, § 10133; C.S.1929, § 29-2005; Laws 1933, c. 38, § 2, p. 243; C.S.Supp.,1941, § 29-2005; R.S.1943, § 29-2005; Laws 1981, LB 213, § 1; Laws 2015, LB268, § 15.
Effective date August 30, 2015.

29-2006 Challenges for cause.

(1) The following shall be good causes for challenge to any person called as a juror or alternate juror, on the trial of any indictment:

(a) That he or she was a member of the grand jury which found the indictment;

(b) That he or she has formed or expressed an opinion as to the guilt or innocence of the accused. However if a juror or alternate juror states that he or she has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to examine, on oath, such juror or alternate juror as to the ground of such opinion; and if it appears to have been founded upon reading newspaper statements, communications, comments or reports, or upon rumor or hearsay, and not upon conversations with witnesses of the transactions or reading reports of their testimony or hearing them testify, and the juror or alternate juror says on oath that he or she feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror or alternate juror is impartial

and will render such verdict, may, in its discretion, admit such juror or alternate juror as competent to serve in such case;

(c) That he or she is a relation within the fifth degree to the person alleged to be injured or attempted to be injured, or to the person on whose complaint the prosecution was instituted, or to the defendant;

(d) That he or she has served on the petit jury which was sworn in the same cause against the same defendant and which jury either rendered a verdict which was set aside or was discharged, after hearing the evidence;

(e) That he or she has served as a juror in a civil case brought against the defendant for the same act;

(f) That he or she has been in good faith subpoenaed as a witness in the case; or

(g) That he or she is a habitual drunkard.

(2) In addition, the same challenges as are allowed in civil cases shall be allowed in criminal prosecutions.

Source: G.S.1873, c. 58, § 468, p. 826; R.S.1913, § 9109; C.S.1922, § 10134; C.S.1929, § 29-2006; Laws 1933, c. 38, § 3, p. 243; C.S.Supp.,1941, § 29-2006; R.S.1943, § 29-2006; Laws 2015, LB268, § 16.

Effective date August 30, 2015.

29-2011.02 Witnesses; refusal to testify or provide information; court order for testimony or information; limitation on use.

Whenever a witness refuses, on the basis of the privilege against self-incrimination, to testify or to provide other information in a criminal proceeding or investigation before a court, a grand jury, Auditor of Public Accounts, or a special committee of the Legislature authorized pursuant to section 50-404, the court, on motion of the county attorney, other prosecuting attorney, Auditor of Public Accounts, or chairperson of a special committee of the Legislature, may order the witness to testify or to provide other information. The witness may not refuse to comply with such an order of the court on the basis of the privilege against self-incrimination, but no testimony or other information compelled under the court's order or any information directly or indirectly derived from such testimony or other information may be used against the witness in any criminal case except in a prosecution for perjury, giving a false statement, or failing to comply with the order of the court.

Source: Laws 1982, LB 525, § 1; Laws 1990, LB 1246, § 12; Laws 2015, LB539, § 1.

Effective date May 28, 2015.

Cross References

Legislative Council, committee investigations, see sections 50-404 to 50-409.

29-2011.03 Order for testimony or information of witness; request; when.

The county attorney, other prosecuting attorney, Auditor of Public Accounts, or chairperson of a special committee of the Legislature authorized pursuant to section 50-404 upon an affirmative vote of a majority of the committee may request an order pursuant to section 29-2011.02 when in his or her judgment:

(1) The testimony or other information from such individual may be necessary to the public interest; and

(2) Such individual has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

Source: Laws 1982, LB 525, § 2; Laws 1990, LB 1246, § 13; Laws 2015, LB539, § 2.
Effective date May 28, 2015.

29-2020 Bill of exceptions by defendant; request; procedure.

In all criminal cases when a defendant feels aggrieved by any opinion or decision of the court, he or she may order a bill of exceptions. The ordering, preparing, signing, filing, correcting, and amending of the bill of exceptions shall be governed by the rules established in such matters in civil cases.

Source: G.S.1873, c. 58, § 482, p. 829; R.S.1913, § 9123; C.S.1922, § 10148; C.S.1929, § 29-2020; R.S.1943, § 29-2020; Laws 1959, c. 120, § 1, p. 452; Laws 1961, c. 135, § 2, p. 390; Laws 1990, LB 829, § 1; Laws 2015, LB268, § 17.
Effective date August 30, 2015.

Cross References

Error proceedings by county attorney, decision on appeal, see section 29-2316.

29-2027 Verdict in trials for murder; conviction by confession; sentencing procedure.

In all trials for murder the jury before whom such trial is had, if they find the prisoner guilty thereof, shall ascertain in their verdict whether it is murder in the first or second degree or manslaughter. If such person is convicted by confession in open court, the court shall proceed by examination of witnesses in open court, to determine the degree of the crime, and shall pronounce sentence accordingly.

Source: G.S.1873, c. 58, § 489, p. 830; R.S.1913, § 9130; C.S.1922, § 10155; C.S.1929, § 29-2027; R.S.1943, § 29-2027; Laws 2002, Third Spec. Sess., LB 1, § 7; Laws 2015, LB268, § 18.
Effective date August 30, 2015.

ARTICLE 21

MOTIONS FOR NEW TRIAL AND ARREST OF JUDGMENT

Section

29-2102. New trial; affidavits; when required; motion; hearing.

29-2103. New trial; motion; how and when made.

29-2102 New trial; affidavits; when required; motion; hearing.

(1) The grounds set forth in subdivisions (2), (3), and (6) of section 29-2101 shall be supported by affidavits showing the truth of such grounds, and the grounds may be controverted by affidavits. The ground set forth in subdivision (5) of section 29-2101 shall be supported by evidence of the truth of the ground in the form of affidavits, depositions, or oral testimony.

(2) If the motion for new trial and supporting documents fail to set forth sufficient facts, the court may, on its own motion, dismiss the motion without a

hearing. If the motion for new trial and supporting documents set forth facts which, if true, would materially affect the substantial rights of the defendant, the court shall cause notice of the motion to be served on the prosecuting attorney, grant a hearing on the motion, and determine the issues and make findings of fact and conclusions of law with respect thereto.

(3) In considering a motion for new trial based on the grounds set forth in subdivision (5) of section 29-2101, if the court finds that there is evidence materially affecting the substantial rights of the defendant which he or she could not with reasonable diligence have discovered and produced at trial, the court may, upon the motion of any party and following a hearing, vacate and set aside the judgment and release the person from custody or grant a new trial as appropriate.

Source: G.S.1873, c. 58, § 492, p. 831; R.S.1913, § 9132; C.S.1922, § 10157; C.S.1929, § 29-2102; R.S.1943, § 29-2102; Laws 2001, LB 659, § 12; Laws 2015, LB245, § 1.
Effective date August 30, 2015.

29-2103 New trial; motion; how and when made.

(1) A motion for new trial shall be made by written application and may be filed either during or after the term of the court at which the verdict was rendered.

(2) A motion for a new trial shall state the grounds under section 29-2101 which are the basis for the motion and shall be supported by evidence as provided in section 29-2102.

(3) A motion for new trial based on the grounds set forth in subdivision (1), (2), (3), (4), or (7) of section 29-2101 shall be filed within ten days after the verdict was rendered unless such filing is unavoidably prevented, and the grounds for such motion may be stated by directly incorporating the appropriate language of section 29-2101 without further particularity.

(4) A motion for new trial based on the grounds set forth in subdivision (5) of section 29-2101 shall be filed within a reasonable time after the discovery of the new evidence and cannot be filed more than five years after the date of the verdict, unless the motion and supporting documents show the new evidence could not with reasonable diligence have been discovered and produced at trial and such evidence is so substantial that a different result may have occurred.

(5) A motion for new trial based on the grounds set forth in subdivision (6) of section 29-2101 shall be filed within ninety days after a final order is issued under section 29-4123 or within ninety days after the hearing if no final order is entered, whichever occurs first.

Source: G.S.1873, c. 58, § 491, p. 831; Laws 1881, c. 33, § 1, p. 212; R.S.1913, § 9133; C.S.1922, § 10158; C.S.1929, § 29-2103; Laws 1935, c. 65, § 1, p. 223; C.S.Supp.,1941, § 29-2103; R.S.1943, § 29-2103; Laws 1947, c. 104, § 1, p. 293; Laws 2001, LB 659, § 13; Laws 2015, LB245, § 2.
Effective date August 30, 2015.

**ARTICLE 22
JUDGMENT ON CONVICTION**

(a) JUDGMENT ON CONVICTION

- Section
29-2204. Sentence for felony other than Class III, IIIA, or IV felony; court; duties; study of offender; when; defendant under eighteen years of age; disposition.
29-2204.01. Repealed. Laws 2015, LB 605, § 112.
29-2204.02. Sentence for Class III, IIIA, or IV felony; court; duties; defendant under eighteen years of age; disposition.
29-2204.03. Study of offender; commitment to Department of Correctional Services; written report; costs.

(c) PROBATION

- 29-2246. Terms, defined.
29-2252. Probation administrator; duties.
29-2252.01. Probation administrator; report required.
29-2260. Certain juveniles; disposition; certain offenders; sentence of probation, when.
29-2261. Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.
29-2262. Probation; conditions.
29-2263. Probation; term; court; powers; post-release supervision; term; probation obligation satisfied, when; probationer outside of jurisdiction without permission; effect.
29-2266. Probation; violation; procedure.
29-2268. Probation; post-release supervision; violation; court; determination.

(e) RESTITUTION

- 29-2281. Restitution; determination of amount; manner of payment.

(a) JUDGMENT ON CONVICTION

29-2204 Sentence for felony other than Class III, IIIA, or IV felony; court; duties; study of offender; when; defendant under eighteen years of age; disposition.

(1) Except when the defendant is found guilty of a Class IA felony, in imposing a sentence upon an offender for any class of felony other than a Class III, IIIA, or IV felony, the court shall fix the minimum and the maximum terms of the sentence to be served within the limits provided by law. The maximum term shall not be greater than the maximum limit provided by law, and:

(a) The minimum term fixed by the court shall be any term of years less than the maximum term imposed by the court; or

(b) The minimum term shall be the minimum limit provided by law.

(2) When a maximum term of life is imposed by the court for a Class IB felony, the minimum term fixed by the court shall be:

(a) Any term of years not less than the minimum limit provided by law; or

(b) A term of life imprisonment.

(3) When a maximum term of life is imposed by the court for a Class IA felony, the minimum term fixed by the court shall be:

(a) A term of life imprisonment; or

(b) Any term of years not less than the minimum limit provided by law after consideration of the mitigating factors in section 28-105.02, if the defendant

was under eighteen years of age at the time he or she committed the crime for which he or she was convicted.

(4) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court may commit an offender to the Department of Correctional Services. During that time, the department shall conduct a complete study of the offender as provided in section 29-2204.03.

(5) Except when the defendant is found guilty of a Class IA felony, whenever the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code.

(6)(a) When imposing an indeterminate sentence upon an offender under this section, the court shall:

(i) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(ii) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

(b) If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term.

(c) If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

Source: G.S.1873, c. 58, § 498, p. 832; R.S.1913, § 9140; C.S.1922, § 10165; C.S.1929, § 29-2205; R.S.1943, § 29-2204; Laws 1974, LB 620, § 7; Laws 1988, LB 790, § 3; Laws 1993, LB 31, § 9; Laws 1993, LB 529, § 1; Laws 1993, LB 627, § 1; Laws 1994, LB 988, § 8; Laws 1995, LB 371, § 12; Laws 1997, LB 364, § 14; Laws 1998, LB 1073, § 10; Laws 2002, Third Spec. Sess., LB 1, § 8; Laws 2011, LB12, § 2; Laws 2013, LB561, § 2; Laws 2015, LB268, § 19; Laws 2015, LB605, § 60.
Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB268, section 19, with LB605, section 60, to reflect all amendments.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

29-2204.01 Repealed. Laws 2015, LB 605, § 112.

29-2204.02 Sentence for Class III, IIIA, or IV felony; court; duties; defendant under eighteen years of age; disposition.

(1) Except when a term of probation is required by law, in imposing a sentence upon an offender for a Class III, IIIA, or IV felony, the court shall:

(a) Impose a sentence of imprisonment within the applicable range in section 28-105; and

(b) Impose a sentence of post-release supervision, under the jurisdiction of the Office of Probation Administration, within the applicable range in section 28-105.

(2) If the criminal offense is a Class IV felony, the court shall impose a sentence of probation unless:

(a) The defendant is concurrently or consecutively sentenced to imprisonment for any felony other than another Class IV felony;

(b) The defendant has been deemed a habitual criminal pursuant to section 29-2221; or

(c) There are substantial and compelling reasons why the defendant cannot effectively and safely be supervised in the community, including, but not limited to, the criteria in subsections (2) and (3) of section 29-2260. Unless other reasons are found to be present, that the offender has not previously succeeded on probation is not, standing alone, a substantial and compelling reason.

(3) If a sentence of probation is not imposed, the court shall state its reasoning on the record, advise the defendant of his or her right to appeal the sentence, and impose a sentence as provided in subsection (1) of this section.

(4) If the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code.

(5)(a) When imposing a determinate sentence upon an offender under this section, the court shall:

(i) Advise the offender on the record the time the offender will serve on his or her term of imprisonment before his or her term of post-release supervision assuming that no good time for which the offender will be eligible is lost; and

(ii) Advise the offender on the record the time the offender will serve on his or her term of post-release supervision before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

(b) If a period of post-release supervision is required but not imposed by the sentencing court, the term of post-release supervision shall be the minimum provided by law.

(c) If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

Source: Laws 2015, LB605, § 61.

Effective date August 30, 2015.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

29-2204.03 Study of offender; commitment to Department of Correctional Services; written report; costs.

(1) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by

section 29-2261, the court shall commit an offender to the Department of Correctional Services for a period not exceeding ninety days. The department shall conduct a complete study of the offender during that time, inquiring into such matters as his or her previous delinquency or criminal experience, social background, capabilities, and mental, emotional, and physical health and the rehabilitative resources or programs which may be available to suit his or her needs.

(2) By the expiration of the period of commitment or by the expiration of such additional time as the court shall grant, not exceeding a further period of ninety days, the offender shall be returned to the court for sentencing and the court shall be provided with a written report of the results of the study, including whatever recommendations the department believes will be helpful to a proper resolution of the case. After receiving the report and the recommendations, the court shall proceed to sentence the offender in accordance with section 29-2204 or 29-2204.02. The term of the sentence shall run from the date of original commitment under this section.

(3) In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the defendant is held in a state institution under this section shall be a responsibility of the state and the county shall be liable only for the cost of delivering the defendant to the institution and the cost of returning him or her to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

Source: Laws 2015, LB605, § 62.
Effective date August 30, 2015.

(c) PROBATION

29-2246 Terms, defined.

For purposes of the Nebraska Probation Administration Act and sections 43-2,123.01 and 83-1,102 to 83-1,104, unless the context otherwise requires:

- (1) Association means the Nebraska District Court Judges Association;
- (2) Court means a district court, county court, or juvenile court as defined in section 43-245;
- (3) Office means the Office of Probation Administration;
- (4) Probation means a sentence under which a person found guilty of a crime upon verdict or plea or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision. Probation includes post-release supervision;
- (5) Probationer means a person sentenced to probation or post-release supervision;
- (6) Probation officer means an employee of the system who supervises probationers and conducts presentence, predisposition, or other investigations as may be required by law or directed by a court in which he or she is serving or performs such other duties as authorized pursuant to section 29-2258, except unpaid volunteers from the community;
- (7) Juvenile probation officer means any probation officer who supervises probationers of a separate juvenile court;

(8) Juvenile intake probation officer means an employee of the system who is called upon by a law enforcement officer in accordance with section 43-250 to make a decision regarding the furtherance of a juvenile's detention;

(9) Chief probation officer means the probation officer in charge of a probation district;

(10) System means the Nebraska Probation System;

(11) Administrator means the probation administrator;

(12) Non-probation-based program or service means a program or service established within the district, county, or juvenile courts and provided to individuals not sentenced to probation who have been charged with or convicted of a crime for the purpose of diverting the individual from incarceration or to provide treatment for issues related to the individual's criminogenic needs. Non-probation-based programs or services include, but are not limited to, drug court programs and problem solving court programs established pursuant to section 24-1302 and the treatment of problems relating to substance abuse, mental health, sex offenses, or domestic violence;

(13) Post-release supervision means the portion of a split sentence following a period of incarceration under which a person found guilty of a crime upon verdict or plea is released by a court subject to conditions imposed by the court and subject to supervision by the office; and

(14) Rules and regulations means policies and procedures written by the office and approved by the Supreme Court.

Source: Laws 1971, LB 680, § 1; Laws 1972, LB 1051, § 1; Laws 1984, LB 13, § 61; Laws 1986, LB 529, § 32; Laws 2001, LB 451, § 1; Laws 2005, LB 538, § 5; Laws 2008, LB1014, § 18; Laws 2015, LB605, § 63.

Effective date August 30, 2015.

29-2252 Probation administrator; duties.

The administrator shall:

(1) Supervise and administer the office;

(2) Establish and maintain policies, standards, and procedures for the system, with the concurrence of the Supreme Court;

(3) Prescribe and furnish such forms for records and reports for the system as shall be deemed necessary for uniformity, efficiency, and statistical accuracy;

(4) Establish minimum qualifications for employment as a probation officer in this state and establish and maintain such additional qualifications as he or she deems appropriate for appointment to the system. Qualifications for probation officers shall be established in accordance with subsection (4) of section 29-2253. An ex-offender released from a penal complex or a county jail may be appointed to a position of deputy probation or parole officer. Such ex-offender shall maintain a record free of arrests, except for minor traffic violations, for one year immediately preceding his or her appointment;

(5) Establish and maintain advanced periodic inservice training requirements for the system;

(6) Cooperate with all agencies, public or private, which are concerned with treatment or welfare of persons on probation;

(7) Organize and conduct training programs for probation officers. Training shall include the proper use of a risk and needs assessment, risk-based supervision strategies, relationship skills, cognitive behavioral interventions, community-based resources, criminal risk factors, and targeting criminal risk factors to reduce recidivism and the proper use of a matrix of administrative sanctions, custodial sanctions, and rewards developed pursuant to subdivision (18) of this section. All probation officers employed on or after August 30, 2015, shall complete the training requirements set forth in this subdivision;

(8) Collect, develop, and maintain statistical information concerning probationers, probation practices, and the operation of the system and provide the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice with the information needed to compile the report required in section 47-624;

(9) Interpret the probation program to the public with a view toward developing a broad base of public support;

(10) Conduct research for the purpose of evaluating and improving the effectiveness of the system. Subject to the availability of funding, the administrator shall contract with an independent contractor or academic institution for evaluation of existing community corrections facilities and programs operated by the office;

(11) Adopt and promulgate such rules and regulations as may be necessary or proper for the operation of the office or system. The administrator shall adopt and promulgate rules and regulations for transitioning individuals on probation across levels of supervision and discharging them from supervision consistent with evidence-based practices. The rules and regulations shall ensure supervision resources are prioritized for individuals who are high risk to reoffend, require transitioning individuals down levels of supervision intensity based on assessed risk and months of supervision without a reported major violation, and establish incentives for earning discharge from supervision based on compliance;

(12) Transmit a report during each even-numbered year to the Supreme Court on the operation of the office for the preceding two calendar years which shall include a historical analysis of probation officer workload, including participation in non-probation-based programs and services. The report shall be transmitted by the Supreme Court to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically;

(13) Administer the payment by the state of all salaries, travel, and actual and necessary expenses incident to the conduct and maintenance of the office;

(14) Use the funds provided under section 29-2262.07 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced probation-based programs and non-probation-based programs and services in which probation personnel or probation resources are utilized pursuant to an interlocal agreement authorized by subdivision (16) of this section and to purchase services to provide such programs aimed at enhancing adult probationer or non-probation-based program participant supervision in the community and treatment needs of probationers and non-probation-based program participants. Enhanced probation-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs that address a probationer's

vocational, educational, mental health, behavioral, or substance abuse treatment needs;

(15) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated;

(16) Have the authority to enter into interlocal agreements in which probation resources or probation personnel may be utilized in conjunction with or as part of non-probation-based programs and services. Any such interlocal agreement shall comply with section 29-2255;

(17) Collaborate with the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice and the Office of Parole Administration to develop rules governing the participation of parolees in community corrections programs operated by the Office of Probation Administration;

(18) Develop a matrix of rewards for compliance and positive behaviors and graduated administrative sanctions and custodial sanctions for use in responding to and deterring substance abuse violations and technical violations. As applicable under section 29-2266, custodial sanctions of up to thirty days in jail shall be designated as the most severe response to a violation in lieu of revocation and custodial sanctions of up to three days in jail shall be designated as the second most severe response;

(19) Adopt and promulgate rules and regulations for the creation of individualized post-release supervision plans, collaboratively with the Department of Correctional Services and county jails, for probationers sentenced to post-release supervision; and

(20) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Each member of the Legislature shall receive an electronic copy of the report required by subdivision (12) of this section by making a request for it to the administrator.

Source: Laws 1971, LB 680, § 7; Laws 1973, LB 126, § 2; Laws 1978, LB 625, § 9; Laws 1979, LB 322, § 9; Laws 1979, LB 536, § 6; Laws 1981, LB 545, § 6; Laws 1984, LB 13, § 65; Laws 1986, LB 529, § 37; Laws 1990, LB 663, § 16; Laws 1992, LB 447, § 5; Laws 2003, LB 46, § 5; Laws 2005, LB 538, § 7; Laws 2011, LB390, § 1; Laws 2012, LB782, § 32; Laws 2015, LB605, § 64.
Effective date August 30, 2015.

29-2252.01 Probation administrator; report required.

On December 31 and June 30 of each fiscal year, the administrator shall provide a report to the budget division of the Department of Administrative Services, the Legislative Fiscal Analyst, and the Supreme Court which shall include, but not be limited to:

(1) The total number of felony cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(2) The total number of misdemeanor cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(3) The felony caseload per officer for both regular and intensive supervision probation on the last day of the reporting period;

(4) The misdemeanor caseload per officer for both regular and intensive supervision probation on the last day of the reporting period;

(5) The total number of juvenile cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(6) The total number of predisposition investigations completed by the office in the previous six months;

(7) The total number of presentence investigations completed by the office in the previous six months;

(8) The total number of juvenile intake screening interviews conducted and detentions authorized by the office in the previous six months, using the detention screening instrument described in section 43-260.01; and

(9) The total number of probationers with restitution judgments, the number of restitution payments made to clerks of the court, the average amount of payments, and the total amount of restitution collected.

The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

Source: Laws 1990, LB 220, § 4; Laws 2001, LB 451, § 2; Laws 2012, LB782, § 33; Laws 2015, LB605, § 65.
Effective date August 30, 2015.

29-2260 Certain juveniles; disposition; certain offenders; sentence of probation, when.

(1) Whenever a person is adjudicated to be as described in subdivision (1), (2), (3)(b), or (4) of section 43-247, his or her disposition shall be governed by the Nebraska Juvenile Code.

(2) Whenever a court considers sentence for an offender convicted of either a misdemeanor or a felony for which mandatory or mandatory minimum imprisonment is not specifically required, the court may withhold sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character, and condition of the offender, the court finds that imprisonment of the offender is necessary for protection of the public because:

(a) The risk is substantial that during the period of probation the offender will engage in additional criminal conduct;

(b) The offender is in need of correctional treatment that can be provided most effectively by commitment to a correctional facility; or

(c) A lesser sentence will depreciate the seriousness of the offender's crime or promote disrespect for law.

(3) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of withholding sentence of imprisonment:

(a) The crime neither caused nor threatened serious harm;

(b) The offender did not contemplate that his or her crime would cause or threaten serious harm;

(c) The offender acted under strong provocation;

(d) Substantial grounds were present tending to excuse or justify the crime, though failing to establish a defense;

(e) The victim of the crime induced or facilitated commission of the crime;

(f) The offender has compensated or will compensate the victim of his or her crime for the damage or injury the victim sustained;

(g) The offender has no history of prior delinquency or criminal activity and has led a law-abiding life for a substantial period of time before the commission of the crime;

(h) The crime was the result of circumstances unlikely to recur;

(i) The character and attitudes of the offender indicate that he or she is unlikely to commit another crime;

(j) The offender is likely to respond affirmatively to probationary treatment; and

(k) Imprisonment of the offender would entail excessive hardship to his or her dependents.

(4) When an offender who has been convicted of a crime is not sentenced to imprisonment, the court may sentence him or her to probation.

(5) For all sentences of imprisonment for Class III, IIIA, or IV felonies, other than those imposed consecutively or concurrently with a sentence to imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony, the court shall impose a determinate sentence within the applicable range in section 28-105, including a period of post-release supervision.

Source: Laws 1971, LB 680, § 15; Laws 1982, LB 568, § 3; Laws 1986, LB 153, § 2; Laws 1988, LB 790, § 4; Laws 2015, LB605, § 66. Effective date August 30, 2015.

Cross References

Intensive supervision probation program, see sections 29-2262.02 to 29-2262.05.
Nebraska Juvenile Code, see section 43-2,129.

29-2261 Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.

(1) Unless it is impractical to do so, when an offender has been convicted of a felony, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case, except in cases in which an offender has been convicted of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic infraction, or any corresponding city or village ordinance.

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

(a) Any written statements submitted to the county attorney by a victim; and

(b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

(a) He or she has attempted to contact the victim; and

(b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119.

(5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that purpose. The offender may be remanded for this purpose to any available clinic or mental hospital, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

(6) Any presentence report, substance abuse evaluation, or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, the probation administrator or his or her designee, alcohol and drug counselors, mental health practitioners, psychiatrists, and psychologists licensed or certified under the Uniform Credentialing Act to conduct substance abuse evaluations and treatment, or others entitled by law to receive such information, including personnel and mental health professionals for the Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report, evaluation, or examination for assessing risk and for community notification of registered sex offenders. For purposes of this subsection, mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (c) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act.

(7) The court shall permit inspection of the presentence report, substance abuse evaluation, or psychiatric examination or parts of the report, evaluation, or examination, as determined by the court, by the prosecuting attorney and defense counsel. Beginning July 1, 2016, such inspection shall be by electronic access only unless the court determines such access is not available to the prosecuting attorney or defense counsel. The State Court Administrator shall determine and develop the means of electronic access to such presentence reports, evaluations, and examinations. Upon application by the prosecuting attorney or defense counsel, the court may order that addresses, telephone numbers, and other contact information for victims or witnesses named in the report, evaluation, or examination be redacted upon a showing by a preponderance of the evidence that such redaction is warranted in the interests of public safety. The court may permit inspection of the presentence report, substance abuse evaluation, or psychiatric examination or examination of parts of the report, evaluation, or examination by any other person having a proper interest therein whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(8) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation, substance abuse evaluation, or psychiatric examination shall be transmitted immediately to the Department of Correctional Services. Upon request, the Board of Parole or the Office of Parole Administration may receive a copy of the report from the department.

(9) Notwithstanding subsections (6) and (7) of this section, the Supreme Court or an agent of the Supreme Court acting under the direction and supervision of the Chief Justice shall have access to psychiatric examinations, substance abuse evaluations, and presentence investigations and reports for research purposes. The Supreme Court and its agent shall treat such information as confidential, and nothing identifying any individual shall be released.

Source: Laws 1971, LB 680, § 16; Laws 1974, LB 723, § 1; Laws 1983, LB 78, § 4; Laws 2000, LB 1008, § 1; Laws 2002, LB 564, § 1; Laws 2002, Third Spec. Sess., LB 1, § 9; Laws 2003, LB 46, § 8; Laws 2004, LB 1207, § 17; Laws 2007, LB463, § 1129; Laws 2011, LB390, § 3; Laws 2015, LB268, § 20; Laws 2015, LB504, § 1.

Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB268, section 20, with LB504, section 1, to reflect all amendments.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

Mental Health Practice Act, see section 38-2101.

Uniform Credentialing Act, see section 38-101.

29-2262 Probation; conditions.

(1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life. No offender shall be sentenced to probation if he or she is deemed to be a habitual criminal pursuant to section 29-2221.

(2) The court may, as a condition of a sentence of probation, require the offender:

- (a) To refrain from unlawful conduct;
- (b) For misdemeanors, to be confined periodically in the county jail or to return to custody after specified hours but not to exceed the lesser of ninety days or the maximum jail term provided by law for the offense;
- (c) To meet his or her family responsibilities;
- (d) To devote himself or herself to a specific employment or occupation;
- (e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;
- (f) To pursue a prescribed secular course of study or vocational training;
- (g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
- (h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
- (i) To possess no firearm or other dangerous weapon if convicted of a felony, or if convicted of any other offense, to possess no firearm or other dangerous weapon unless granted written permission by the court;

(j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment and to agree to waive extradition if found in another jurisdiction;

(k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;

(l) To pay a fine in one or more payments as ordered;

(m) To pay for tests to determine the presence of drugs or alcohol, psychological evaluations, offender assessment screens, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

(n) To perform community service as outlined in sections 29-2277 to 29-2279 under the direction of his or her probation officer;

(o) To be monitored by an electronic surveillance device or system and to pay the cost of such device or system if the offender has the financial ability;

(p) To participate in a community correctional facility or program as provided in the Community Corrections Act;

(q) To successfully complete an incarceration work camp program as determined by the Department of Correctional Services;

(r) To satisfy any other conditions reasonably related to the rehabilitation of the offender;

(s) To make restitution as described in sections 29-2280 and 29-2281; or

(t) To pay for all costs imposed by the court, including court costs and the fees imposed pursuant to section 29-2262.06.

(3) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by such section.

(4) In all cases in which the offender is guilty of a crime covered by the DNA Identification Information Act, a condition of probation shall be the collecting of a DNA sample pursuant to the act and the paying of all costs associated with the collection of the DNA sample prior to release from probation.

Source: Laws 1971, LB 680, § 17; Laws 1975, LB 289, § 1; Laws 1978, LB 623, § 29; Laws 1979, LB 292, § 1; Laws 1986, LB 504, § 2; Laws 1986, LB 528, § 4; Laws 1986, LB 956, § 14; Laws 1989, LB 592, § 3; Laws 1989, LB 669, § 1; Laws 1990, LB 220, § 8; Laws 1991, LB 742, § 2; Laws 1993, LB 627, § 2; Laws 1995, LB 371, § 15; Laws 1997, LB 882, § 1; Laws 1998, LB 218, § 16; Laws 2003, LB 46, § 9; Laws 2006, LB 385, § 1; Laws 2010, LB190, § 1; Laws 2015, LB605, § 67.

Effective date August 30, 2015.

Cross References

Community Corrections Act, see section 47-619.

DNA Identification Information Act, see section 29-4101.

29-2263 Probation; term; court; powers; post-release supervision; term; probation obligation satisfied, when; probationer outside of jurisdiction without permission; effect.

(1) Except as provided in subsection (2) of this section, when a court has sentenced an offender to probation, the court shall specify the term of such

probation which shall be not more than five years upon conviction of a felony or second offense misdemeanor and two years upon conviction of a first offense misdemeanor. The court, on application of a probation officer or of the probationer or on its own motion, may discharge a probationer at any time.

(2) When a court has sentenced an offender to post-release supervision, the court shall specify the term of such post-release supervision as provided in section 28-105. The court, on application of a probation officer or of the probationer or on its own motion, may discharge a probationer at any time.

(3) During the term of probation, the court on application of a probation officer or of the probationer, or its own motion, may modify or eliminate any of the conditions imposed on the probationer or add further conditions authorized by section 29-2262. This subsection does not preclude a probation officer from imposing administrative sanctions with the probationer's full knowledge and consent as authorized by subsection (2) or (9) of section 29-2266.

(4) Upon completion of the term of probation, or the earlier discharge of the probationer, the probationer shall be relieved of any obligations imposed by the order of the court and shall have satisfied the sentence for his or her crime.

(5) Whenever a probationer disappears or leaves the jurisdiction of the court without permission, the time during which he or she keeps his or her whereabouts hidden or remains away from the jurisdiction of the court shall be added to the original term of probation.

Source: Laws 1971, LB 680, § 18; Laws 1975, LB 289, § 2; Laws 2003, LB 46, § 10; Laws 2015, LB605, § 68.
Effective date August 30, 2015.

29-2266 Probation; violation; procedure.

(1) For purposes of this section:

(a) Administrative sanction means additional probation requirements imposed upon a probationer by his or her probation officer, with the full knowledge and consent of the probationer, designed to hold the probationer accountable for violations of conditions of probation, including:

- (i) Counseling or reprimand by his or her probation officer;
- (ii) Increased supervision contact requirements;
- (iii) Increased substance abuse testing;
- (iv) Referral for substance abuse or mental health evaluation or other specialized assessment, counseling, or treatment;
- (v) Imposition of a designated curfew for a period not to exceed thirty days;
- (vi) Community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;
- (vii) Travel restrictions to stay within his or her county of residence or employment unless otherwise permitted by the supervising probation officer; and
- (viii) Restructuring court-imposed financial obligations to mitigate their effect on the probationer;

(b) Noncriminal violation means a probationer's activities or behaviors which create the opportunity for re-offending or diminish the effectiveness of proba-

tion supervision resulting in a violation of an original condition of probation, including:

- (i) Moving traffic violations;
- (ii) Failure to report to his or her probation officer;
- (iii) Leaving the jurisdiction of the court or leaving the state without the permission of the court or his or her probation officer;
- (iv) Failure to work regularly or attend training or school;
- (v) Failure to notify his or her probation officer of change of address or employment;
- (vi) Frequenting places where controlled substances are illegally sold, used, distributed, or administered;
- (vii) Failure to perform community service as directed; and
- (viii) Failure to pay fines, court costs, restitution, or any fees imposed pursuant to section 29-2262.06 as directed; and

(c) Substance abuse violation means a probationer's activities or behaviors associated with the use of chemical substances or related treatment services resulting in a violation of an original condition of probation, including:

- (i) Positive breath test for the consumption of alcohol if the offender is required to refrain from alcohol consumption;
- (ii) Positive urinalysis for the illegal use of drugs;
- (iii) Failure to report for alcohol testing or drug testing; and
- (iv) Failure to appear for or complete substance abuse or mental health treatment evaluations or inpatient or outpatient treatment.

(2) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a misdemeanor has committed or is about to commit a substance abuse violation or noncriminal violation while on probation, but that the probationer will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall either:

(a) Impose one or more administrative sanctions with the approval of his or her chief probation officer or such chief's designee. The decision to impose administrative sanctions in lieu of formal revocation proceedings rests with the probation officer and his or her chief probation officer or such chief's designee and shall be based upon the probationer's risk level, the severity of the violation, and the probationer's response to the violation. If administrative sanctions are to be imposed, the probationer shall acknowledge in writing the nature of the violation and agree upon the administrative sanction. The probationer has the right to decline to acknowledge the violation; and if he or she declines to acknowledge the violation, the probation officer shall take action pursuant to subdivision (2)(b) of this section. A copy of the report shall be submitted to the county attorney of the county where probation was imposed; or

(b) Submit a written report to the sentencing court, with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation and request that formal revocation proceedings be instituted against the probationer.

(3) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a misdemeanor has violated or is about to violate a

condition of probation other than a substance abuse violation or noncriminal violation and that the probationer will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall submit a written report to the sentencing court, with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation.

(4) Whenever a probation officer has a reasonable cause to believe that a probationer sentenced for a misdemeanor has violated or is about to violate a condition of his or her probation and that the probationer will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall arrest the probationer without a warrant and may call on any peace officer for assistance. Whenever a probationer is arrested, with or without a warrant, he or she shall be detained in a jail or other detention facility.

(5) Immediately after arrest and detention pursuant to subsection (4) of this section, the probation officer shall notify the county attorney of the county where probation was imposed and submit a written report of the reason for such arrest and of any violation of probation. After prompt consideration of such written report, the county attorney shall:

(a) Order the probationer's release from confinement; or

(b) File with the sentencing court a motion or information to revoke the probation.

(6) Whenever a county attorney receives a report from a probation officer that a probationer sentenced for a misdemeanor has violated a condition of probation, the county attorney may file a motion or information to revoke probation.

(7) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a felony has committed or is about to commit a violation while on probation, the probation officer shall consider:

(a) Whether the probation officer is required to arrest the probationer pursuant to subsection (10) of this section;

(b) The probationer's risk level, the severity of the violation, and the probationer's response to the violation; and

(c) Whether to impose administrative sanctions or seek custodial sanctions or revocation pursuant to subsection (8) of this section.

(8) The following sanctions may be imposed or sought by the probation officer, with approval from his or her chief probation officer or such chief's designee, for felony probationers:

(a) One or more administrative sanctions;

(b) A custodial sanction of up to three days in jail or up to thirty days in jail, to be imposed by the court. Custodial sanctions may be combined with one or more administrative sanctions; or

(c) Formal revocation proceedings, however formal revocations may only be instituted against the probationer for a substance abuse or noncriminal violation if the probationer has served ninety days of cumulative custodial sanctions during the current probation term.

(9) If administrative sanctions are to be imposed by the probation officer pursuant to subsection (8) of this section, the probationer must acknowledge in writing the nature of the violation and agree upon the sanction. Prior to

acknowledging the violation and agreeing upon the sanction, the probationer must be presented with a violation report and advised of the right to a hearing before the court on the alleged violation. The probationer has the right to decline to acknowledge the violation and request a court hearing. If the probationer declines to acknowledge the violation, the probation officer shall submit a written report to the sentencing court, with a copy to the county attorney of the county where probation was imposed, describing the alleged violation or violations and requesting that administrative sanctions or a custodial sanction of up to thirty days in jail be imposed.

(10) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a felony has violated or is about to violate a condition of his or her probation and that the probationer will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall arrest the probationer without a warrant and may call on any peace officer for assistance. Whenever a probationer is arrested, with or without a warrant, he or she shall be detained in a jail or other detention facility. The probation officer shall notify the county attorney of the county where probation was imposed and submit a written report of the reason for such arrest and of any violation of probation. After prompt consideration of such written report, the county attorney shall:

- (a) Order the probationer's release from confinement; or
- (b) File with the sentencing court a motion or information to impose administrative or custodial sanctions, or both, or revoke the probation.

(11) The administrator shall adopt and promulgate rules and regulations at the direction of the Supreme Court to ensure prompt court review of requests for the imposition of custodial sanctions.

(12) The administrator shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1971, LB 680, § 21; Laws 2003, LB 46, § 11; Laws 2015, LB605, § 69.
Effective date August 30, 2015.

29-2268 Probation; post-release supervision; violation; court; determination.

(1) If the court finds that the probationer, other than a probationer serving a term of post-release supervision, did violate a condition of his or her probation, it may revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he or she was convicted.

(2) If the court finds that a probationer serving a term of post-release supervision did violate a condition of his or her post-release supervision, it may revoke the post-release supervision and impose on the offender a term of imprisonment up to the remaining period of post-release supervision. The term shall be served in an institution under the jurisdiction of the Department of Correctional Services or in county jail subject to subsection (2) of section 28-105.

(3) If the court finds that the probationer did violate a condition of his or her probation, but is of the opinion that revocation is not appropriate, the court may order that:

- (a) The probationer receive a reprimand and warning;

(b) Probation supervision and reporting be intensified;

(c) The probationer be required to conform to one or more additional conditions of probation which may be imposed in accordance with the provisions of sections 29-2246 to 29-2268; and

(d) The probationer's term of probation be extended, subject to the provisions of section 29-2263.

Source: Laws 1971, LB 680, § 23; Laws 2015, LB605, § 70.
Effective date August 30, 2015.

(e) RESTITUTION

29-2281 Restitution; determination of amount; manner of payment.

To determine the amount of restitution, the court may hold a hearing at the time of sentencing. The amount of restitution shall be based on the actual damages sustained by the victim and shall be supported by evidence which shall become a part of the court record. The court shall consider the defendant's earning ability, employment status, financial resources, and family or other legal obligations and shall balance such considerations against the obligation to the victim. In considering the earning ability of a defendant who is sentenced to imprisonment, the court may receive evidence of money anticipated to be earned by the defendant during incarceration. A person may not be granted or denied probation or parole either solely or primarily due to his or her financial resources or ability or inability to pay restitution. The court may order that restitution be made immediately, in specified installments, or within a specified period of time not to exceed five years after the date of judgment or defendant's final release date from imprisonment, whichever is later. Restitution payments shall be made through the clerk of the court ordering restitution. The clerk shall maintain a record of all receipts and disbursements.

Source: Laws 1986, LB 956, § 2; Laws 1992, LB 1059, § 26; Laws 2015, LB605, § 71.
Effective date August 30, 2015.

ARTICLE 23

REVIEW OF JUDGMENTS IN CRIMINAL CASES

Section
29-2308. Reduction of sentence; conditions; appellate court; powers.

29-2308 Reduction of sentence; conditions; appellate court; powers.

(1) In all criminal cases that now are or may hereafter be pending in the Court of Appeals or Supreme Court, the appellate court may reduce the sentence rendered by the district court against the accused when in its opinion the sentence is excessive, and it shall be the duty of the appellate court to render such sentence against the accused as in its opinion may be warranted by the evidence. No judgment shall be set aside, new trial granted, or judgment rendered in any criminal case on the grounds of misdirection of the jury or the improper admission or rejection of evidence or for error as to any matter of pleading or procedure if the appellate court, after an examination of the entire cause, considers that no substantial miscarriage of justice has actually occurred.

(2) In all criminal cases based on offenses subject to determinate sentencing under subsection (2) of section 29-2204.02, the appellate court may determine that a sentence is excessive because the district court did not provide substantial and compelling reasons for imposing a sentence other than probation.

Source: Laws 1887, c. 110, § 1, p. 668; R.S.1913, § 9179; Laws 1921, c. 157, § 1, p. 648; C.S.1922, § 10186; C.S.1929, § 29-2308; R.S. 1943, § 29-2308; Laws 1982, LB 722, § 8; Laws 1991, LB 732, § 79; Laws 2015, LB605, § 72.
Effective date August 30, 2015.

Cross References

Homicide, special procedures for sentencing, see sections 29-2519 to 29-2546.

ARTICLE 24

EXECUTION OF SENTENCES

Section

29-2407. Judgments for fines, costs, and forfeited recognizances; lien; exemptions; duration.

29-2407 Judgments for fines, costs, and forfeited recognizances; lien; exemptions; duration.

Judgments for fines and costs in criminal cases shall be a lien upon all the property of the defendant within the county from the time of docketing the case by the clerk of the proper court, and judgments upon forfeited recognizance shall be a like lien from the time of forfeiture. No property of any convict shall be exempt from execution issued upon any such judgment as set out in this section against such convict except in cases when the convict is sentenced to a Department of Correctional Services adult correctional facility for a period of more than two years, in which cases there shall be the same exemptions as at the time may be provided by law for civil cases. The lien on real estate of any such judgment for costs shall terminate as provided in section 25-1716.

Source: G.S.1873, c. 58, § 524, p. 837; R.S.1913, § 9194; C.S.1922, § 10201; C.S.1929, § 29-2407; R.S.1943, § 29-2407; Laws 1974, LB 666, § 2; Laws 1993, LB 31, § 11; Laws 2015, LB268, § 21.
Effective date August 30, 2015.

Cross References

Exemptions in civil cases, see section 25-1552 et seq.

ARTICLE 25

SPECIAL PROCEDURE IN CASES OF HOMICIDE

Section

29-2501. Legislative changes eliminating death penalty; effect.
29-2502. Death penalty; legislative intent.
29-2519. Repealed. Laws 2015, LB 268, § 35.
29-2520. Repealed. Laws 2015, LB 268, § 35.
29-2521. Repealed. Laws 2015, LB 268, § 35.
29-2521.01. Repealed. Laws 2015, LB 268, § 35.
29-2521.02. Repealed. Laws 2015, LB 268, § 35.
29-2521.03. Repealed. Laws 2015, LB 268, § 35.
29-2521.04. Repealed. Laws 2015, LB 268, § 35.

Section

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| 29-2521.05. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2522. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2523. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2524. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2524.01. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2524.02. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2525. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2527. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2528. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2537. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2538. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2539. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2540. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2541. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2542. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2543. | Repealed. Laws 2015, LB 268, § 35. |
| 29-2546. | Repealed. Laws 2015, LB 268, § 35. |

29-2501 Legislative changes eliminating death penalty; effect.

The changes made by Laws 2015, LB268, shall not (1) limit the discretionary authority of the sentencing court to order restitution as part of any sentence or (2) alter the discretion and authority of the Department of Correctional Services to determine the appropriate security measures and conditions during the confinement of any committed offender.

Source: Laws 2015, LB268, § 22.
Effective date August 30, 2015.

29-2502 Death penalty; legislative intent.

It is the intent of the Legislature that in any criminal proceeding in which the death penalty has been imposed but not carried out prior to August 30, 2015, such penalty shall be changed to life imprisonment.

Source: Laws 2015, LB268, § 23.
Effective date August 30, 2015.

29-2519 Repealed. Laws 2015, LB 268, § 35.

29-2520 Repealed. Laws 2015, LB 268, § 35.

29-2521 Repealed. Laws 2015, LB 268, § 35.

29-2521.01 Repealed. Laws 2015, LB 268, § 35.

29-2521.02 Repealed. Laws 2015, LB 268, § 35.

29-2521.03 Repealed. Laws 2015, LB 268, § 35.

29-2521.04 Repealed. Laws 2015, LB 268, § 35.

29-2521.05 Repealed. Laws 2015, LB 268, § 35.

29-2522 Repealed. Laws 2015, LB 268, § 35.

29-2523 Repealed. Laws 2015, LB 268, § 35.

29-2524 Repealed. Laws 2015, LB 268, § 35.

29-2524.01 Repealed. Laws 2015, LB 268, § 35.

29-2524.02 Repealed. Laws 2015, LB 268, § 35.

29-2525 Repealed. Laws 2015, LB 268, § 35.

29-2527 Repealed. Laws 2015, LB 268, § 35.

29-2528 Repealed. Laws 2015, LB 268, § 35.

29-2537 Repealed. Laws 2015, LB 268, § 35.

29-2538 Repealed. Laws 2015, LB 268, § 35.

29-2539 Repealed. Laws 2015, LB 268, § 35.

29-2540 Repealed. Laws 2015, LB 268, § 35.

29-2541 Repealed. Laws 2015, LB 268, § 35.

29-2542 Repealed. Laws 2015, LB 268, § 35.

29-2543 Repealed. Laws 2015, LB 268, § 35.

29-2546 Repealed. Laws 2015, LB 268, § 35.

ARTICLE 28

HABEAS CORPUS

Section

29-2801. Habeas corpus; writ; when allowed.

29-2811. Repealed. Laws 2015, LB 268, § 35.

29-2801 Habeas corpus; writ; when allowed.

If any person, except persons convicted of some crime or offense for which they stand committed, now or in the future, is confined in any jail of this state, or is unlawfully deprived of his or her liberty, and makes application, either by himself or herself or by any person on his or her behalf, to any one of the judges of the district court, or to any county judge, and does at the same time produce to such judge a copy of the commitment or cause of detention of such person, or if the person so imprisoned or detained is imprisoned or detained without any legal authority, upon making the same appear to such judge, by oath or affirmation, it is the duty of the judge forthwith to allow a writ of habeas corpus, which writ shall be issued forthwith by the clerk of the district court, or by the county judge, as the case may require, under the seal of the court whereof the person allowing such writ is a judge, directed to the proper officer, person, or persons who detain such prisoner.

Source: G.S.1873, c. 58, § 353, p. 804; R.S.1913, § 9247; C.S.1922, § 10276; C.S.1929, § 29-2801; R.S.1943, § 29-2801; Laws 2015, LB268, § 24.

Effective date August 30, 2015.

29-2811 Repealed. Laws 2015, LB 268, § 35.

ARTICLE 32

RENDITION OF PRISONERS AS WITNESSES

Section
29-3205. Act; exceptions.

29-3205 Act; exceptions.

The Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act shall not apply to any person in this state confined as mentally ill.

Source: Laws 1969, c. 229, § 5, p. 855; Laws 1986, LB 1177, § 11; Laws 2015, LB268, § 25.
Effective date August 30, 2015.

ARTICLE 35

CRIMINAL HISTORY INFORMATION

Section
29-3523. Criminal history record information; notation of an arrest; dissemination; limitations; removal; expungement.

29-3523 Criminal history record information; notation of an arrest; dissemination; limitations; removal; expungement.

(1) That part of criminal history record information consisting of a notation of an arrest, described in subsection (3) of this section, shall not be disseminated to persons other than criminal justice agencies after the expiration of the periods described in subsection (3) of this section except as provided in subsection (2) of this section and except when the subject of the record:

(a) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(b) Is currently an announced candidate for or holder of public office;

(c) Has made a notarized request for the release of such record to a specific person; or

(d) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (i) dates of arrests, (ii) reasons for arrests, and (iii) the nature of the dispositions including, but not limited to, reasons for not prosecuting the case or cases.

(2) That part of criminal history record information consisting of a notation of an arrest, described in subsection (3) of this section, may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that specifically authorizes access to the information, limits the use of the information to research, evaluative, or statistical activities, and ensures the confidentiality and security of the information.

(3) Except as provided in subsections (1) and (2) of this section, the notation of arrest shall be removed from the public record as follows:

(a) In the case of an arrest for which no charges are filed as a result of the determination of the prosecuting attorney, the arrest shall not be part of the public record after one year from the date of arrest;

(b) In the case of an arrest for which charges are not filed as a result of a completed diversion, the arrest shall not be part of the public record after two years from the date of arrest; and

(c) In the case of an arrest for which charges are filed, but dismissed by the court on motion of the prosecuting attorney or as a result of a hearing not the subject of a pending appeal, the arrest shall not be part of the public record after three years from the date of arrest.

(4) Any person arrested due to the error of a law enforcement agency may file a petition with the district court for an order to expunge the criminal history record information related to such error. The petition shall be filed in the district court of the county in which the petitioner was arrested. The county attorney shall be named as the respondent and shall be served with a copy of the petition. The court may grant the petition and issue an order to expunge such information if the petitioner shows by clear and convincing evidence that the arrest was due to error by the arresting law enforcement agency.

Source: Laws 1978, LB 713, § 25; Laws 1980, LB 782, § 1; Laws 1997, LB 856, § 1; Laws 2007, LB470, § 1; Laws 2015, LB605, § 73.
Effective date August 30, 2015.

ARTICLE 39

PUBLIC DEFENDERS AND APPOINTED COUNSEL

(c) COUNTY REVENUE ASSISTANCE ACT

Section

- 29-3920. Legislative findings.
- 29-3922. Terms, defined.
- 29-3928. Chief counsel; qualifications; salary.
- 29-3929. Chief counsel; duties.
- 29-3930. Commission; divisions established.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3920 Legislative findings.

The Legislature finds that:

(1) County property owners should be given some relief from the obligation of providing mandated indigent defense services which in most instances are required because of state laws establishing crimes and penalties;

(2) Property tax relief can be accomplished if the state begins to assist the counties with the obligation of providing indigent defense services required by state laws establishing crimes and penalties;

(3) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also increase accountability because the state, which is the governmental entity responsible for passing criminal statutes, will likewise be responsible for paying some of the costs;

(4) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also improve inconsistent and inadequate funding of indigent defense services by the counties;

(5) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also lessen the impact on county property taxpayers of the cost of a high profile first-degree murder case which can significantly affect the finances of the counties; and

(6) To accomplish property tax relief in the form of the state assisting the counties of Nebraska in providing for indigent defense services, the Commission on Public Advocacy Operations Cash Fund should be established to fund the operation of the Commission on Public Advocacy and to fund reimbursement requests as determined by section 29-3933.

Source: Laws 1995, LB 646, § 2; Laws 2002, LB 876, § 64; Laws 2003, LB 760, § 9; Laws 2015, LB268, § 26.
Effective date August 30, 2015.

29-3922 Terms, defined.

For purposes of the County Revenue Assistance Act:

(1) Chief counsel means an attorney appointed to be the primary administrative officer of the commission pursuant to section 29-3928;

(2) Commission means the Commission on Public Advocacy;

(3) Commission staff means attorneys, investigators, and support staff who are performing work for the first-degree murder litigation division, appellate division, DNA testing division, and major case resource center;

(4) Contracting attorney means an attorney contracting to act as a public defender pursuant to sections 23-3404 to 23-3408;

(5) Court-appointed attorney means an attorney other than a contracting attorney or a public defender appointed by the court to represent an indigent person;

(6) Indigent defense services means legal services provided to indigent persons by an indigent defense system in first-degree murder cases, felony cases, misdemeanor cases, juvenile cases, mental health commitment cases, child support enforcement cases, and paternity establishment cases;

(7) Indigent defense system means a system of providing services, including any services necessary for litigating a case, by a contracting attorney, court-appointed attorney, or public defender;

(8) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to subdivision (3) of section 29-3901; and

(9) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

Source: Laws 1995, LB 646, § 4; Laws 2001, LB 335, § 3; Laws 2001, LB 659, § 15; Laws 2009, LB154, § 2; Laws 2015, LB268, § 27.
Effective date August 30, 2015.

29-3928 Chief counsel; qualifications; salary.

The commission shall appoint a chief counsel. The responsibilities and duties of the chief counsel shall be defined by the commission and shall include the overall supervision of the workings of the various divisions of the commission. The chief counsel shall be qualified for his or her position, shall have been licensed to practice law in the State of Nebraska for at least five years prior to the effective date of the appointment, and shall be experienced in the practice

of criminal defense, including the defense of first-degree murder cases. The chief counsel shall serve at the pleasure of the commission. The salary of the chief counsel shall be set by the commission.

Source: Laws 1995, LB 646, § 10; Laws 2015, LB268, § 28.

Effective date August 30, 2015.

29-3929 Chief counsel; duties.

The primary duties of the chief counsel shall be to provide direct legal services to indigent defendants, and the chief counsel shall:

(1) Supervise the operations of the appellate division, the first-degree murder litigation division, the DNA testing division, and the major case resource center;

(2) Prepare a budget and disburse funds for the operations of the commission;

(3) Present to the commission an annual report on the operations of the commission, including an accounting of all funds received and disbursed, an evaluation of the cost-effectiveness of the commission, and recommendations for improvement;

(4) Convene or contract for conferences and training seminars related to criminal defense;

(5) Perform other duties as directed by the commission;

(6) Establish and administer projects and programs for the operation of the commission;

(7) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(8) Adopt and promulgate rules and regulations for the management and administration of policies of the commission and the conduct of employees of the commission;

(9) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(10) Execute and carry out all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons; and

(11) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Source: Laws 1995, LB 646, § 11; Laws 2001, LB 659, § 16; Laws 2015, LB268, § 29.

Effective date August 30, 2015.

29-3930 Commission; divisions established.

The following divisions are established within the commission:

(1) The first-degree murder litigation division shall be available to assist in the defense of first-degree murder cases in Nebraska, subject to caseload standards of the commission;

(2) The appellate division shall be available to prosecute appeals to the Court of Appeals and the Supreme Court, subject to caseload standards of the commission;

SEX OFFENDERS

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(3) The violent crime and drug defense division shall be available to assist in the defense of certain violent and drug crimes as defined by the commission, subject to the caseload standards of the commission;

(4) The DNA testing division shall be available to assist in representing persons who are indigent who have filed a motion pursuant to the DNA Testing Act, subject to caseload standards; and

(5) The major case resource center shall be available to assist public defenders, contracting attorneys, or court-appointed attorneys with the defense of a felony offense, subject to caseload standards of the commission.

Source: Laws 1995, LB 646, § 12; Laws 2001, LB 659, § 17; Laws 2003, LB 760, § 11; Laws 2015, LB268, § 30.
Effective date August 30, 2015.

Cross References

DNA Testing Act, see section 29-4116.

ARTICLE 40

SEX OFFENDERS

(a) **SEX OFFENDER REGISTRATION ACT**

Section

29-4001.01. Terms, defined.

29-4006. Registration format; contents; verification; name change; duties; information provided to sheriff; violation; warrant.

29-4007. Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.

29-4011. Violations; penalties; investigation and enforcement.

(a) **SEX OFFENDER REGISTRATION ACT**

29-4001.01 Terms, defined.

For purposes of the Sex Offender Registration Act:

(1) Aggravated offense means any registrable offense under section 29-4003 which involves the penetration of, direct genital touching of, oral to anal contact with, or oral to genital contact with (a) a victim age thirteen years or older without the consent of the victim, (b) a victim under the age of thirteen years, or (c) a victim who the sex offender knew or should have known was mentally or physically incapable of resisting or appraising the nature of his or her conduct;

(2) DNA sample has the same meaning as in section 29-4103;

(3) Habitual living location means any place that an offender may stay for a period of more than three days even though the sex offender maintains a separate permanent address or temporary domicile;

(4) Minor means a person under eighteen years of age;

(5) State DNA Data Base means the data base established pursuant to section 29-4104; and

(6) Temporary domicile means any place at which the person actually lives or stays for a period of at least three working days.

Source: Laws 2009, LB97, § 24; Laws 2009, LB285, § 3; Laws 2015, LB292, § 5.
Effective date August 30, 2015.

29-4006 Registration format; contents; verification; name change; duties; information provided to sheriff; violation; warrant.

(1) Registration information required by the Sex Offender Registration Act shall be entered into a data base in a format approved by the sex offender registration and community notification division of the Nebraska State Patrol and shall include, but not be limited to, the following information:

(a) The legal name and all aliases which the person has used or under which the person has been known;

(b) The person's date of birth and any alias dates of birth;

(c) The person's social security number;

(d) The address of each residence at which the person resides, has a temporary domicile, has a habitual living location, or will reside;

(e) The name and address of any place where the person is an employee or will be an employee, including work locations without a single worksite;

(f) The name and address of any place where the person is a student or will be a student;

(g) The license plate number and a description of any vehicle owned or operated by the person and its regular storage location;

(h) The person's motor vehicle operator's license number, including the person's valid motor vehicle operator's license or state identification card submitted for photocopying;

(i) The person's original travel and immigration documents submitted for photocopying;

(j) The person's original professional licenses or certificates submitted for photocopying;

(k) The person's telephone numbers;

(l) A physical description of the person;

(m) A digital link to the text of the provision of law defining the criminal offense or offenses for which the person is registered under the act;

(n) Access to the criminal history of the person, including the date of all arrests and convictions, the status of parole, probation, or supervised release, registration status, and the existence of any outstanding arrest warrants for the person;

(o) A current photograph of the person;

(p) A set of fingerprints and palm prints of the person; and

(q) A DNA sample of the person.

(2) Except as provided in section 29-4005, the registration information shall be verified as provided in subsections (3), (4), and (5) of this section for the duration of the registration period. The person shall appear in person for such verification at the office of the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living for purposes of accepting verifications and shall have his or her photograph and fingerprints taken upon request of verification personnel.

(3) A person required to register under the act for fifteen years shall report every twelve months in the month of his or her birth, in person, to the office of the sheriff of the county in which he or she resides for purposes of accepting

verifications, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(4) A person required to register under the act for twenty-five years shall report, in person, every six months to the office of the sheriff of the county in which he or she resides for purposes of accepting verification. The person shall report, in person, in the month of his or her birth and in the sixth month following the month of his or her birth, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(5) A person required to register under the act for life shall report, in person, every three months to the office of the sheriff of the county in which he or she resides for purposes of accepting verification. The person shall report, in person, in the month of his or her birth and every three months following the month of his or her birth, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(6) The verification form shall be signed by the person required to register under the act and state whether the address last reported to the division is still correct.

(7) Upon receipt of registration and confirmation of the registry requirement, the sex offender registration and community notification division of the Nebraska State Patrol shall notify the person by certified mail of his or her registry duration and verification schedule.

(8) If the person required to register under the act fails to report in person as required in subsection (3), (4), or (5) of this section, the person shall be in violation of this section.

(9) If the person required to register under the act falsifies the registration or verification information or form or fails to provide or timely update law enforcement of any of the information required to be provided by the Sex Offender Registration Act, the person shall be in violation of this section.

(10) The verification requirements of a person required to register under the act shall not apply during periods of such person's incarceration or inpatient civil commitment. Verification shall be resumed as soon as such person is placed on any type of supervised release, parole, or probation or outpatient civil commitment or is released from incarceration or civil commitment. Prior to any type of release from incarceration or inpatient civil commitment, the person shall report a change of address, in writing, to the sheriff of the county in which he or she is incarcerated and the sheriff of the county in which he or she resides, has a temporary domicile, or has a habitual living location. The sheriff shall submit the change of address to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(11) Any person required to register under the act shall, in person, inform the sheriff of any legal change in name within three working days after such change and provide a copy of the legal documentation supporting the change in name. The sheriff shall submit the information to the sex offender registration and community notification division of the Nebraska State Patrol, in writing, immediately after receipt of the information and in a manner prescribed by the Nebraska State Patrol for such purpose.

(12) At any time that a person required to register under the act violates the registry requirements and cannot be located, the registry information shall reflect that the person has absconded, a warrant shall be sought for the person's arrest, and the United States Marshals Service shall be notified.

Source: Laws 1996, LB 645, § 6; Laws 2002, LB 564, § 6; Laws 2006, LB 1199, § 21; Laws 2009, LB97, § 26; Laws 2009, LB285, § 7; Laws 2015, LB292, § 6.
Effective date August 30, 2015.

29-4007 Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.

(1) When sentencing a person convicted of a registrable offense under section 29-4003, the court shall:

(a) Provide written notification of the duty to register under the Sex Offender Registration Act at the time of sentencing to any defendant who has pled guilty or has been found guilty of a registrable offense under section 29-4003. The written notification shall:

(i) Inform the defendant of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the defendant that if he or she moves to another address within the same county, he or she must report to the county sheriff of the county in which he or she is residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the defendant that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the defendant that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has had a habitual living location and must comply with the registration requirements

of the state to which he or she is moving. The notice must be given within three working days before his or her move;

(vi) Inform the defendant that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days;

(vii) Inform the defendant that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the defendant that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations; and

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to register under the Sex Offender Registration Act has been explained;

(c) Retain a copy of the written notification signed by the defendant; and

(d) Provide a copy of the signed, written notification, the judgment and sentence, the information or amended information, and the journal entry of the court to the county attorney, the defendant, the sex offender registration and community notification division of the Nebraska State Patrol, and the county sheriff of the county in which the defendant resides, has a temporary domicile, or has a habitual living location.

(2) When a person is convicted of a registrable offense under section 29-4003 and is not subject to immediate incarceration upon sentencing, prior to being released by the court, the sentencing court shall ensure that the defendant is registered by a Nebraska State Patrol office or other location designated by the patrol for purposes of accepting registrations.

(3)(a) The Department of Correctional Services or a city or county correctional or jail facility shall provide written notification of the duty to register pursuant to the Sex Offender Registration Act to any person committed to its custody for a registrable offense under section 29-4003 prior to the person's release from incarceration. The written notification shall:

(i) Inform the person of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of

accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the person that if he or she moves to another address within the same county, he or she must report all address changes, in person, to the county sheriff of the county in which he or she has been residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the person that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the person that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has been habitually living and must comply with the registration requirements of the state to which he or she is moving. The report must be given within three working days before his or her move;

(vi) Inform the person that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days after such change;

(vii) Inform the person that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the person that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations; and

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005.

(b) The Department of Correctional Services or a city or county correctional or jail facility shall:

- (i) Require the person to read and sign the notification form stating that the duty to register under the Sex Offender Registration Act has been explained;
 - (ii) Retain a signed copy of the written notification to register; and
 - (iii) Provide a copy of the signed, written notification to register to the person and to the sex offender registration and community notification division of the Nebraska State Patrol.
- (4) If a person is convicted of a registrable offense under section 29-4003 and is immediately incarcerated, he or she shall be registered as required under the act prior to discharge, parole, or work release.
- (5) The Department of Motor Vehicles shall cause written notification of the duty to register to be provided on the applications for a motor vehicle operator's license and for a commercial driver's license.
- (6) All written notification as provided in this section shall be on a form approved by the Attorney General.

Source: Laws 1996, LB 645, § 7; Laws 1998, LB 204, § 1; Laws 2002, LB 564, § 7; Laws 2006, LB 1199, § 22; Laws 2009, LB97, § 27; Laws 2009, LB285, § 8; Laws 2015, LB292, § 7.
Effective date August 30, 2015.

29-4011 Violations; penalties; investigation and enforcement.

- (1) Any person required to register under the Sex Offender Registration Act who violates the act is guilty of a Class IIIA felony.
- (2) Any person required to register under the act who violates the act and who has previously been convicted of a violation of the act is guilty of a Class IIA felony and shall be sentenced to a mandatory minimum term of at least one year in prison unless the violation which caused the person to be placed on the registry was a misdemeanor, in which case the violation of the act shall be a Class IIIA felony.
- (3) Any law enforcement agency with jurisdiction in the area in which a person required to register under the act resides, has a temporary domicile, maintains a habitual living location, is employed, carries on a vocation, or attends school shall investigate and enforce violations of the act.

Source: Laws 1996, LB 645, § 11; Laws 2006, LB 1199, § 24; Laws 2009, LB285, § 10; Laws 2015, LB605, § 74.
Effective date August 30, 2015.

ARTICLE 41

DNA TESTING

(b) DNA TESTING ACT

Section
29-4120. DNA testing; procedure.

(b) DNA TESTING ACT

29-4120 DNA testing; procedure.

- (1) Notwithstanding any other provision of law, a person in custody pursuant to the judgment of a court may, at any time after conviction, file a motion, with or without supporting affidavits, in the court that entered the judgment requesting forensic DNA testing of any biological material that:

(a) Is related to the investigation or prosecution that resulted in such judgment;

(b) Is in the actual or constructive possession or control of the state or is in the possession or control of others under circumstances likely to safeguard the integrity of the biological material's original physical composition; and

(c) Was not previously subjected to DNA testing or can be subjected to retesting with more current DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(2) Notice of such motion shall be served by the person in custody upon the county attorney of the county in which the prosecution was held.

(3) Upon receiving notice of a motion filed pursuant to subsection (1) of this section, the county attorney shall take such steps as are necessary to ensure that any remaining biological material that was secured by the state or a political subdivision in connection with the case is preserved pending the completion of proceedings under the DNA Testing Act.

(4) The county attorney shall prepare an inventory of all evidence that was secured by the state or a political subdivision in connection with the case and shall submit a copy of the inventory to the person or the person's counsel and to the court. If evidence is intentionally destroyed after notice of a motion filed pursuant to this section, the court shall impose appropriate sanctions, including criminal contempt.

(5) Upon consideration of affidavits or after a hearing, the court shall order DNA testing pursuant to a motion filed under subsection (1) of this section upon a determination that (a)(i) the biological material was not previously subjected to DNA testing or (ii) the biological material was tested previously, but current technology could provide a reasonable likelihood of more accurate and probative results, (b) the biological material has been retained under circumstances likely to safeguard the integrity of its original physical composition, and (c) such testing may produce noncumulative, exculpatory evidence relevant to the claim that the person was wrongfully convicted or sentenced.

(6) All forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

Source: Laws 2001, LB 659, § 5; Laws 2015, LB245, § 3.
Effective date August 30, 2015.

CHAPTER 30

DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

Article.

- 4. Recovery of Assets and Access to Will or Other Documents or Information. 30-401 to 30-406.
- 22. Probate Jurisdiction.
Part 1— Short Title, Construction, General Provisions. 30-2201.
Part 3— Scope, Jurisdiction, and Courts. 30-2211.01.
- 26. Protection of Persons under Disability and Their Property.
Part 3— Guardians of Incapacitated Persons. 30-2619.
- 30. Nonprobate Code Provisions. 30-3002 to 30-3005.
- 38. Nebraska Uniform Trust Code.
Part 8— Duties and Powers of Trustee. 30-3880 to 30-3882.

ARTICLE 4

RECOVERY OF ASSETS AND ACCESS TO WILL OR OTHER DOCUMENTS OR INFORMATION

Section

- 30-401. Terms, defined.
- 30-402. Property, claims, or rights of deceased or ward; interested person establish; complaint; effect.
- 30-403. Complaint; person cited; failure to comply; penalty.
- 30-404. Person entrusted with part of the estate; complaint; account; failure to account; penalty.
- 30-405. Conservator or guardian; complaint; account; failure to account; penalty.
- 30-406. Complaint; person cited; proceedings; where held; failure to appear or answer interrogatories; penalty; appointment of special administrator or other special fiduciary.

30-401 Terms, defined.

For purposes of sections 30-401 to 30-406:

- (1) Agent of the ward includes any person appointed as an agent under a power of attorney executed by or on behalf of a ward or which purports to have been executed by or on behalf of a ward;
- (2) Conservator or guardian includes a special fiduciary appointed by a court to investigate the actions of an agent of the ward, the conservator, or the guardian;
- (3) Personal representative includes a special administrator; and
- (4) Ward means an incapacitated person or a protected person as defined in section 30-2601.

Source: Laws 2015, LB43, § 3.
Effective date August 30, 2015.

30-402 Property, claims, or rights of deceased or ward; interested person establish; complaint; effect.

If a personal representative, heir, devisee, creditor, or other person interested in the estate of any deceased person or a conservator or guardian for a ward complains to the judge of the county court, upon an application under oath given on information and belief, that (1) any person may have concealed, embezzled, carried away, or disposed of any money or personal property of the deceased or the ward, (2) such person may have in his or her possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of or tend to disclose the right, title, interest, or claim of the deceased or the ward to any real or personal estate or any claim or demand, (3) such person may have in his or her possession any will of the deceased or any power of attorney, advance health care directive, or power of attorney for health care decisions executed by the ward, or (4) such person may have information or knowledge withheld by the respondent from the personal representative, conservator, or guardian and needed by the personal representative, conservator, or guardian for the recovery of any property by suit or otherwise, the judge may cite such person to appear before the court of probate. Any personal representative, heir, devisee, creditor, conservator, guardian, or other person interested in the estate of such deceased person or the ward may examine such person under oath upon the matter of such complaint or direct interrogatories to him or her. The citation may also direct the person cited to bring with him or her, for examination by the judge and parties interested, any such documents or writings, or any will of the deceased, which may be in his or her possession or under his or her control.

Source: Laws 1978, LB 650, § 24; R.S.1943, (2008), § 30-3002; Laws 2015, LB43, § 4.
Effective date August 30, 2015.

30-403 Complaint; person cited; failure to comply; penalty.

If the person cited under section 30-402 refuses (1) to appear and submit to such examination, (2) to answer such interrogatories as may be put to him or her touching the matter of such complaint, or (3) to bring with him or her any of the documents or writings set forth in the citation which may be in his or her possession or control, the court may, by warrant, commit such person to the county jail of the county to remain in custody until he or she submits to the order of the court. All such interrogatories and answers shall be in writing, shall be signed by the party examined, and shall be filed in the county court.

Source: Laws 1978, LB 650, § 25; R.S.1943, (2008), § 30-3003; Laws 2015, LB43, § 5.
Effective date August 30, 2015.

30-404 Person entrusted with part of the estate; complaint; account; failure to account; penalty.

The judge of the county court, upon the complaint under oath of any personal representative, may cite any person who has been entrusted by such personal representative with any part of the estate of the deceased person to appear before such court and may require such person to render under oath a full account of any money, goods, chattels, bonds, accounts, or other papers belonging to such estate which have come into his or her possession, in trust for such personal representative, and of his or her proceedings thereon. If a

person so cited refuses to appear and render such account, the court may proceed against such person as provided in section 30-403.

Source: Laws 1978, LB 650, § 26; R.S.1943, (2008), § 30-3004; Laws 2015, LB43, § 6.
Effective date August 30, 2015.

30-405 Conservator or guardian; complaint; account; failure to account; penalty.

The judge of the county court, upon the complaint under oath of any conservator or guardian, may cite any person who has been entrusted by such conservator or guardian with any part of the estate of the ward, any current, suspended, or former conservator or guardian of the ward, or any agent of the ward to appear before such court and may require such person to render under oath a full account of any money, goods, chattels, bonds, accounts, or other papers belonging to such estate which have come into his or her possession, in trust for such ward, conservator, or guardian, and of his or her proceedings thereon. If a person so cited refuses to appear and render such account, the court may proceed against such person as provided in section 30-403.

Source: Laws 2015, LB43, § 7.
Effective date August 30, 2015.

30-406 Complaint; person cited; proceedings; where held; failure to appear or answer interrogatories; penalty; appointment of special administrator or other special fiduciary.

(1) If any such person as described in sections 30-402 to 30-405 is not in the county where administration is granted, the proceedings under sections 30-402 to 30-405 may be had before the county judge of the county where such person resides or may be found. A certified copy of the written interrogatories, if any, and the examination or other proceeding thereon or connected therewith shall be filed in the county court of the county where administration is granted. If the person so cited refuses to appear or answer such interrogatories as may be allowed to be put to him or her touching the matter charged, such person may be punished as provided in section 30-403.

(2) If the respondent is the personal representative, conservator, or guardian, the court may appoint a special administrator or other special fiduciary to represent the estate or the ward.

Source: Laws 1978, LB 650, § 27; R.S.1943, (2008), § 30-3005; Laws 2015, LB43, § 8.
Effective date August 30, 2015.

ARTICLE 22

PROBATE JURISDICTION

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section
30-2201. Short title.

PART 3—SCOPE, JURISDICTION, AND COURTS

30-2211.01. Minor; fees and costs.

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

30-2201 Short title.

Sections 30-401 to 30-406, 30-2201 to 30-2902, 30-3901 to 30-3923, and 30-4001 to 30-4045 and the Public Guardianship Act shall be known and may be cited as the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 1, UPC § 1-101; Laws 1985, LB 292, § 1; Laws 1993, LB 250, § 33; Laws 1993, LB 782, § 2; Laws 1997, LB 466, § 2; Laws 1999, LB 100, § 1; Laws 2010, LB758, § 1; Laws 2011, LB157, § 28; Laws 2012, LB1113, § 46; Laws 2014, LB788, § 8; Laws 2014, LB920, § 19; Laws 2014, LB998, § 7; Laws 2015, LB43, § 1; Laws 2015, LB422, § 1.
Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB43, section 1, with LB422, section 1, to reflect all amendments.

Cross References

Public Guardianship Act, see section 30-4101.

PART 3—SCOPE, JURISDICTION, AND COURTS

30-2211.01 Minor; fees and costs.

The reasonable fees and costs of an attorney, a guardian ad litem, a physician, and a visitor appointed by the court for the minor shall be allowed, disallowed, or adjusted by the court and may be paid from the estate of the minor if the minor possesses an estate or, if not, shall be paid by the county in which the proceedings are brought or by the petitioner as costs of the action. An action under sections 30-2601 to 30-2661 may be initiated or defended in forma pauperis in accordance with sections 25-2301 to 25-2310. The court may assess attorney's fees and costs against the petitioner upon a showing that the action was frivolous in accordance with sections 25-824 to 25-824.03.

Source: Laws 2015, LB422, § 2.
Effective date August 30, 2015.

ARTICLE 26

PROTECTION OF PERSONS UNDER DISABILITY
AND THEIR PROPERTY

PART 3—GUARDIANS OF INCAPACITATED PERSONS

Section
30-2619. Procedure for court appointment of a guardian or standby guardian of a person alleged to be incapacitated.

PART 3—GUARDIANS OF INCAPACITATED PERSONS

30-2619 Procedure for court appointment of a guardian or standby guardian of a person alleged to be incapacitated.

(a) The person alleged to be incapacitated or any person interested in his or her welfare may petition for a finding of incapacity and appointment of a guardian or a standby guardian. The petition shall be verified and shall contain specific allegations with regard to each of the areas as provided under section 30-2619.01 in which the petitioner claims that the person alleged to be

incapacitated lacks sufficient understanding to make or communicate responsible decisions concerning his or her own person. An interested person may file a motion to make more definite and certain requesting a specific description of the functional limitations and physical and mental condition of the person alleged to be incapacitated with the specific reasons prompting the request for guardianship.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the person alleged to be incapacitated has retained counsel of his or her own choice or has otherwise indicated a desire for an attorney of his or her own choice, the court may appoint an attorney to represent him or her in the proceeding. The court may appoint a guardian ad litem to advocate for the best interests of the person alleged to be incapacitated.

(c) The person alleged to be incapacitated may be examined by a physician appointed by the court. The physician shall submit his or her report in writing to the court and may be interviewed by a visitor, if so appointed pursuant to sections 30-2619.01 and 30-2624, sent by the court.

(d) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see and hear all evidence bearing upon his or her condition. He or she is entitled to be present by counsel, to compel the attendance of witnesses, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor appointed by the court pursuant to sections 30-2619.01 and 30-2624, and to appeal any final orders or judgments. The issue may be determined at a closed hearing only if the person alleged to be incapacitated or his or her counsel so requests.

(e) At any hearing conducted under this section, the court may designate one or more standby guardians of the person whose appointment will become effective immediately upon the death, unwillingness or inability to act, resignation, or removal by the court of the initially appointed guardian and upon compliance with any rules promulgated by the Supreme Court. The standby guardian shall have the same powers and duties as the initially appointed guardian. The standby guardian shall receive a copy of the order establishing or modifying the initial guardianship and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court in writing. Upon notification and upon compliance with any rules promulgated by the Supreme Court, the court shall issue new letters of guardianship that specify that the standby guardianship appointment is permanent. A standby guardian shall complete the training required by section 30-2601.01 at the time or times required by rules promulgated by the Supreme Court or as otherwise provided by order of the county court.

(f) The Public Guardian shall not be appointed as a standby guardian.

Source: Laws 1974, LB 354, § 237, UPC § 5-303; Laws 1978, LB 650, § 21; Laws 1982, LB 428, § 1; Laws 1993, LB 782, § 5; Laws 1997, LB 466, § 6; Laws 2015, LB43, § 2.

Effective date August 30, 2015.

ARTICLE 30

NONPROBATE CODE PROVISIONS

Section

30-3002. Transferred to section 30-402.

30-3003. Transferred to section 30-403.

§ 30-3002

DECEDENTS' ESTATES

Section

30-3004. Transferred to section 30-404.

30-3005. Transferred to section 30-406.

30-3002 Transferred to section 30-402.

30-3003 Transferred to section 30-403.

30-3004 Transferred to section 30-404.

30-3005 Transferred to section 30-406.

ARTICLE 38

NEBRASKA UNIFORM TRUST CODE

PART 8—DUTIES AND POWERS OF TRUSTEE

Section

30-3880. (UTC 815) General powers of trustee; medicaid reimbursement claim; how treated.

30-3881. (UTC 816) Specific powers of trustee; medicaid reimbursement claim; how treated.

30-3882. (UTC 817) Distribution upon termination; medicaid reimbursement claim; how treated.

PART 8—DUTIES AND POWERS OF TRUSTEE

30-3880 (UTC 815) General powers of trustee; medicaid reimbursement claim; how treated.

(UTC 815) (a) A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by the Nebraska Uniform Trust Code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by sections 30-3866 to 30-3882.

(c) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medicaid reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medicaid reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medicaid reimbursement. If there is no medicaid reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased

trustor's name and social security number and, if available upon reasonable investigation, the name and social security number of the trustor's spouse if such spouse is deceased. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath and mailed by certified mail to the department that states the decedent's name and social security number and, if available upon reasonable investigation, the name and social security number of the decedent's spouse if such spouse is deceased, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate.

Source: Laws 2003, LB 130, § 80; Laws 2015, LB72, § 1.
Effective date August 30, 2015.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

30-3881 (UTC 816) Specific powers of trustee; medicaid reimbursement claim; how treated.

(UTC 816) (a) Without limiting the authority conferred by section 30-3880, a trustee may:

- (1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- (2) acquire or sell property, for cash or on credit, at public or private sale;
- (3) exchange, partition, or otherwise change the character of trust property;
- (4) deposit trust money in an account in a regulated financial-service institution;
- (5) borrow money, including from the trustee, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- (6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
- (7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - (A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;
 - (B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
 - (C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depository or other regulated financial-service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the

circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) paying it to the beneficiary's custodian under the Nebraska Uniform Transfers to Minors Act or custodial trustee under the Nebraska Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

(C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

(b) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medicaid reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medicaid reimbursement due or after the proposed transfer is

made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medicaid reimbursement. If there is no medicaid reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if available upon reasonable investigation, the name and social security number of the trustor's spouse if such spouse is deceased. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath and mailed by certified mail to the department that states the decedent's name and social security number and, if available upon reasonable investigation, the name and social security number of the decedent's spouse if such spouse is deceased, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate.

Source: Laws 2003, LB 130, § 81; Laws 2015, LB72, § 2.
Effective date August 30, 2015.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

Nebraska Uniform Custodial Trust Act, see section 30-3501.

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

30-3882 (UTC 817) Distribution upon termination; medicaid reimbursement claim; how treated.

(UTC 817) (a) Except as limited in subsection (d) of this section, upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Except as limited in subsection (d) of this section, upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

- (1) it was induced by improper conduct of the trustee; or
- (2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

(d) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims

for medicaid reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medicaid reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medicaid reimbursement. If there is no medicaid reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if available upon reasonable investigation, the name and social security number of the trustor's spouse if such spouse is deceased. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath and mailed by certified mail to the department that states the decedent's name and social security number and, if available upon reasonable investigation, the name and social security number of the decedent's spouse if such spouse is deceased, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate.

Source: Laws 2003, LB 130, § 82; Laws 2015, LB72, § 3.
Effective date August 30, 2015.

Cross References

Nebraska Trust Company Act, see section 8-201.01.



CHAPTER 31 DRAINAGE

Article.

2. Drainage by Individual Landowner. 31-202.03, 31-230.
5. Sanitary Drainage Districts in Municipalities. 31-509.
7. Sanitary and Improvement Districts.
 - (b) Districts Formed under Act of 1949. 31-727 to 31-749.
 - (c) District Boundaries. 31-763, 31-766.

ARTICLE 2 DRAINAGE BY INDIVIDUAL LANDOWNER

Section

- 31-202.03. Watercourses; obstructions; cost; special assessment.
 31-230. Cities of the metropolitan class; drainage; cleaning out watercourse; special assessments.

31-202.03 Watercourses; obstructions; cost; special assessment.

The county board, upon receipt of a request pursuant to section 31-202.02, may, if the board finds natural flow is being obstructed, cause the natural watercourse to be cleaned out. The cost thereof shall be levied as a special assessment and apportioned among the property owners specially benefited thereby and collected in the same manner as special assessments are levied and collected for drainage improvements under sections 31-121 to 31-124.

Source: Laws 1951, c. 95, § 3, p. 264; Laws 1972, LB 1053, § 2; Laws 2015, LB361, § 49.
 Effective date August 30, 2015.

31-230 Cities of the metropolitan class; drainage; cleaning out watercourse; special assessments.

The city council of a city of the metropolitan class upon receipt of a request pursuant to section 31-229, may, if it finds that natural flow is being obstructed, cause the natural watercourse to be cleaned out. Except as provided in section 31-221, the cost thereof may be levied as a special assessment and apportioned among the property owners specially benefited thereby and collected in the same manner as special assessments are levied and collected.

Source: Laws 1965, c. 156, § 4, p. 503; Laws 2015, LB361, § 50.
 Effective date August 30, 2015.

ARTICLE 5 SANITARY DRAINAGE DISTRICTS IN MUNICIPALITIES

Section

- 31-509. Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; publication of notices; election; vote required; effect of negative vote; special assessment.

31-509 Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; publication of notices; election; vote required; effect of negative vote; special assessment.

When the Department of Natural Resources files a report and estimate, the county clerk of such county shall publish a notice once each week for three weeks in a newspaper published in the county seat of each of the counties having land within the sanitary drainage district, which notice shall state the filing of the report and estimate, the boundaries of the district to be benefited, that an election will be held at the office of the county clerk between the hours of 8 a.m. and 6 p.m. on a day named in the notice, and that at the election the question of the formation of a sanitary drainage district to include the area described in the report will be determined. The election shall be held in accordance with sections 31-406 to 31-408, except that no directors shall be elected. If a majority vote for the creation of a district based on acreage represented, the sanitary drainage district shall have jurisdiction to make the improvements recommended by the Department of Natural Resources and to levy a special assessment on the lands specially benefited. If a majority vote against the creation of a district, the work shall not be done.

Source: Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-509; Laws 1961, c. 138, § 5, p. 399; Laws 2000, LB 900, § 72; Laws 2015, LB361, § 51.
Effective date August 30, 2015.

ARTICLE 7

SANITARY AND IMPROVEMENT DISTRICTS

(b) DISTRICTS FORMED UNDER ACT OF 1949

Section

- 31-727. Sanitary and improvement district; organized by proceedings in district court; purposes; powers; articles of association; contents; filing; real estate; conditions; terms, defined.
- 31-727.03. District; statements; filed; contents; late filing; fee; duties of real estate broker, salesperson, or owner; acknowledgment from purchaser; remedy.
- 31-729. District; formation; objections.
- 31-735. District; trustees; election; procedure; term; notice; qualified voters; reduction in number of trustees; procedure.
- 31-735.06. Appointment of administrator; election of trustees; special election; when held.
- 31-740. District; trustees or administrator; powers; plans or contracts; approval required; hearing; contracts authorized; audit; failure to perform audit; effect; connection with city sewerage system; rental or use charge; levy; special assessment.
- 31-749. Improvements; engineer; certificate of acceptance; cost; statement; special assessment; notices; hearing; appeal; hearing in district court.

(c) DISTRICT BOUNDARIES

- 31-763. Annexation of territory by a city or village; effect on certain contracts.
- 31-766. Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited; effect on certain contracts.

(b) DISTRICTS FORMED UNDER ACT OF 1949

31-727 Sanitary and improvement district; organized by proceedings in district court; purposes; powers; articles of association; contents; filing; real estate; conditions; terms, defined.

(1)(a) A majority of the owners having an interest in the real property within the limits of a proposed sanitary and improvement district, situated in one or more counties in this state, may form a sanitary and improvement district for

the purposes of installing electric service lines and conduits, a sewer system, a water system, an emergency management warning system, a system of sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for solid waste collection services, contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, and contracting for gas and for electricity for street lighting for the public streets and highways within such proposed district, constructing and contracting for the construction of dikes and levees for flood protection for the district, and acquiring, improving, and operating public parks, playgrounds, and recreational facilities.

(b) The sanitary and improvement district may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction such sanitary and improvement district is located for any public purpose specifically authorized in this section.

(c) Sanitary and improvement districts located in any county which has a city of the metropolitan class within its boundaries or in any adjacent county which has adopted a comprehensive plan may contract with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts.

(d) Nothing in this section shall authorize districts to purchase electric service and resell the same.

(e) The district, in lieu of establishing its own water system, may contract with any utilities district, municipality, or corporation for the installation of a water system and for the provision of water service for fire protection and for the use of the residents of the district.

(f) For the purposes listed in this section, such majority of the owners may make and sign articles of association in which shall be stated (i) the name of the district, (ii) that the district will have perpetual existence, (iii) the limits of the district, (iv) the names and places of residence of the owners of the land in the proposed district, (v) the description of the several tracts of land situated in the district owned by those who may organize the district, (vi) the name or names and the description of the real estate owned by such owners as do not join in the organization of the district but who will be benefited thereby, and (vii) whether the purpose of the corporation is installing gas and electric service lines and conduits, installing a sewer system, installing a water system, installing a system of public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for solid waste collection services, contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, contracting for street lighting for the public streets and highways within the proposed district, constructing or contracting for the construction of dikes and levees for flood protection of the proposed district, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, or, when permitted by this section, contracting with other sanitary and improvement districts to acquire, build, improve, and

operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, contracting for any public purpose specifically authorized in this section, or combination of any one or more of such purposes, or all of such purposes. Such owners of real estate as are unknown may also be set out in the articles as such.

(g) No sanitary and improvement district may own or hold land in excess of ten acres, unless such land so owned and held by such district is actually used for a public purpose, as provided in this section, within three years of its acquisition. Any sanitary and improvement district which has acquired land in excess of ten acres in area and has not devoted the same to a public purpose, as set forth in this section, within three years of the date of its acquisition, shall devote the same to a use set forth in this section or shall divest itself of such land. When a district divests itself of land pursuant to this section, it shall do so by sale at public auction to the highest bidder after notice of such sale has been given by publication at least three times for three consecutive weeks prior to the date of sale in a legal newspaper of general circulation within the area of the district.

(2) The articles of association shall further state that the owners of real estate so forming the district for such purposes are willing and obligate themselves to pay the tax or taxes which may be levied against all the property in the district and special assessments against the real property benefited which may be assessed against them to pay the expenses that may be necessary to install a sewer or water system or both a sewer and water system, the cost of water for fire protection, the cost of grading, changing grade, paving, repairing, graveling, regravelling, widening, or narrowing sidewalks and roads, resurfacing or relaying existing pavement, or otherwise improving any public roads, streets, or highways within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin, the cost of constructing public waterways, docks, or wharfs, and related appurtenances, the cost of constructing or contracting for the construction of dikes and levees for flood protection for the district, the cost of contracting for water for fire protection and for resale to residents of the district, the cost of contracting for police protection and security services, the cost of contracting for solid waste collection services, the cost of contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, the cost of electricity for street lighting for the public streets and highways within the district, the cost of installing gas and electric service lines and conduits, the cost of acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and, when permitted by this section, the cost of contracting for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and the cost of contracting for any public purpose specifically authorized in this section, as provided by law.

(3) The articles shall propose the names of five or more trustees who are (a) owners of real estate located in the proposed district or (b) designees of the owners if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. These five trustees shall serve as a board of trustees until their successors are elected and qualified if such district is organized. No corporation formed or hereafter formed shall perform any new functions, other than

those for which the corporation was formed, without amending its articles of association to include the new function or functions.

(4) After the articles are signed, the same shall be filed in the office of the clerk of the district court of the county in which such sanitary and improvement district is located or, if such sanitary and improvement district is composed of tracts or parcels of land in two or more different counties, in the office of the clerk of the district court for the county in which the greater portion of such proposed sanitary and improvement district is located, together with a petition praying that the same may be declared a sanitary and improvement district under sections 31-727 to 31-762.

(5) Notwithstanding the repeal of sections 31-701 to 31-726.01 by Laws 1996, LB 1321:

(a) Any sanitary and improvement district organized pursuant to such sections and in existence on July 19, 1996, shall, after August 31, 2003, be treated for all purposes as if formed and organized pursuant to sections 31-727 to 31-762;

(b) Any act or proceeding performed or conducted by a sanitary and improvement district organized pursuant to such repealed sections shall be deemed lawful and within the authority of such sanitary and improvement district to perform or conduct after August 31, 2003; and

(c) Any trustees of a sanitary and improvement district organized pursuant to such repealed sections and lawfully elected pursuant to such repealed sections or in conformity with the provisions of sections 31-727 to 31-762 shall be deemed for all purposes, on and after August 31, 2003, to be lawful trustees of such sanitary and improvement district for the term provided by such sections. Upon the expiration of the term of office of a trustee or at such time as there is a vacancy in the office of any such trustee prior to the expiration of his or her term, his or her successors or replacement shall be elected pursuant to sections 31-727 to 31-762.

(6)(a) A sanitary and improvement district that meets the requirements of this subsection shall have the additional powers provided for in subdivision (b) of this subsection, subject to the approval and restrictions established by the city council or village board within whose zoning jurisdiction the sanitary and improvement district is located and the county board in which a majority of the sanitary and improvement district is located. The sanitary and improvement district shall be (i) located in a county with a population less than one hundred thousand inhabitants, (ii) located predominately in a county different from the county of the municipality within whose zoning jurisdiction such sanitary and improvement district is located, (iii) unable to incorporate due to its close proximity to a municipality, and (iv) unable to be annexed by a municipality with zoning jurisdiction because the sanitary and improvement district is not adjacent or contiguous to such municipality.

(b) Any sanitary and improvement district that meets the requirements of subdivision (6)(a) of this section shall have only the following additional powers, subject to the approval and restrictions of the city council or village board within whose zoning jurisdiction such sanitary and improvement district is located and the county board in which a majority of the sanitary and improvement district is located. Such sanitary and improvement district shall have the power to (i) regulate and license dogs and other animals, (ii) regulate and provide for streets and sidewalks, including the removal of obstructions

and encroachments, (iii) regulate parking on public roads and rights-of-way relating to snow removal and access by emergency vehicles, and (iv) regulate the parking of abandoned motor vehicles.

(7) For the purposes of sections 31-727 to 31-762 and 31-771 to 31-780, unless the context otherwise requires:

(a) Public waterways means artificially created boat channels dedicated to public use and providing access to navigable rivers or streams;

(b) Operation and maintenance expenses means and includes, but is not limited to, salaries, cost of materials and supplies for operation and maintenance of the district's facilities, cost of ordinary repairs, replacements, and alterations, cost of surety bonds and insurance, cost of audits and other fees, and taxes;

(c) Capital outlay means expenditures for construction or reconstruction of major permanent facilities having an expected long life, including, but not limited to, street paving and curbs, storm and sanitary sewers, and other utilities;

(d) Warrant means an investment security under article 8, Uniform Commercial Code, in the form of a short-term, interest-bearing order payable on a specified date issued by the board of trustees or administrator of a sanitary and improvement district to be paid from funds expected to be received in the future, and includes, but is not limited to, property tax collections, special assessment collections, and proceeds of sale of general obligation bonds;

(e) General obligation bond means an investment security under article 8, Uniform Commercial Code, in the form of a long-term, written promise to pay a specified sum of money, referred to as the face value or principal amount, at a specified maturity date or dates in the future, plus periodic interest at a specified rate; and

(f) Administrator means the person appointed by the Auditor of Public Accounts pursuant to section 31-771 to manage the affairs of a sanitary and improvement district and to exercise the powers of the board of trustees during the period of the appointment to the extent prescribed in sections 31-727 to 31-780.

Source: Laws 1949, c. 78, § 1, p. 194; Laws 1955, c. 117, § 1, p. 310; Laws 1961, c. 142, § 1, p. 409; Laws 1967, c. 189, § 1, p. 518; Laws 1969, c. 250, § 1, p. 909; Laws 1969, c. 251, § 1, p. 918; Laws 1973, LB 245, § 1; Laws 1974, LB 757, § 7; Laws 1976, LB 313, § 1; Laws 1977, LB 228, § 1; Laws 1982, LB 868, § 1; Laws 1985, LB 207, § 1; Laws 1994, LB 501, § 1; Laws 1996, LB 43, § 5; Laws 2003, LB 721, § 1; Laws 2008, LB768, § 1; Laws 2015, LB324, § 1.

Effective date August 30, 2015.

31-727.03 District; statements; filed; contents; late filing; fee; duties of real estate broker, salesperson, or owner; acknowledgment from purchaser; remedy.

(1) On or before December 31 of each year, the clerk of each sanitary and improvement district shall file with the register of deeds or, if none, the county clerk of the county or counties in which the sanitary and improvement district

is located a statement updated each December 31 containing the following information:

- (a) The names of the members of the current board of trustees of the district;
- (b) The names of the current attorney, accountant, and fiscal agent of the district;
- (c) The warrant and the bond principal indebtedness of the district as of the preceding June 30. Such statement shall contain an acknowledgment that the warrant and indebtedness are reflective of such date; and
- (d) The current bond tax levy and the current operating levy of the district, as described in section 31-739, as of December 31.

For any late filing of the statement, the sanitary and improvement district shall be assessed a late fee of ten dollars per day, not to exceed a total of three hundred dollars for each late filing.

(2) The real estate broker or salesperson or, if none, the owner shall distribute the most recent statement filed in accordance with this section to any prospective purchaser of any real estate located within a sanitary and improvement district.

(3) The real estate broker or salesperson or, if none, the owner shall obtain an acknowledgment from any purchaser of any real estate located within a sanitary and improvement district that the purchaser understands: (a) The property is located within a sanitary and improvement district; (b) sanitary and improvement districts are located outside the corporate limits of any municipality; (c) residents of sanitary and improvement districts are not eligible to vote in municipal elections; and (d) owners of property located within sanitary and improvement districts have limited access to services provided by nearby municipalities until and unless the property is annexed by the municipality. Such acknowledgment may be obtained separately from the disclosure required under section 76-2,120.

(4) The statement shall be distributed and the acknowledgment obtained on or before the date on which the purchaser becomes obligated to purchase such real estate. The exclusive remedy for failure to provide such statements and obtain such acknowledgments shall be an action for damages, and any such failure shall not affect title to the real estate or the validity of the conveyance.

Source: Laws 1976, LB 313, § 12; Laws 1977, LB 267, § 1; Laws 1979, LB 252, § 1; Laws 1979, LB 187, § 142; Laws 1980, LB 599, § 9; Laws 1991, LB 128, § 1; Laws 1992, LB 764, § 1; Laws 1996, LB 1362, § 4; Laws 2015, LB324, § 2.
Effective date August 30, 2015.

31-729 District; formation; objections.

All owners of real estate situated in the proposed district who have not signed the articles of association and who may object to the organization of the district or to any one or more of the proposed trustees shall, on or before the time in which they are required to answer, file any such objection in writing, stating (1) why such sanitary and improvement district should not be organized and declared a public corporation in this state, (2) why their land will not be benefited by the installation of a sewer or water system, or both a sewer and water system, a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, and gas and electricity

for street lighting for the public streets and highways within the district, by the contracting for solid waste collection services, by the construction or contracting for the construction of dikes and levees for flood protection for the district, gas or electric service lines and conduits, and water for fire protection and the health and property of the owners protected, by the acquisition, improvement and operation of public parks, playgrounds, and recreational facilities, and, where permitted by section 31-727, by the contracting with other sanitary and improvement districts for the building, acquisition, improvement, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, (3) why their land should not be embraced in the limits of such district, and (4) their objections if any to any one or more of the proposed trustees.

Source: Laws 1949, c. 78, § 3, p. 196; Laws 1955, c. 117, § 3, p. 312; Laws 1961, c. 142, § 3, p. 412; Laws 1967, c. 189, § 3, p. 521; Laws 1969, c. 250, § 3, p. 912; Laws 1973, LB 245, § 3; Laws 1974, LB 757, § 9; Laws 2015, LB324, § 3.
Effective date August 30, 2015.

31-735 District; trustees; election; procedure; term; notice; qualified voters; reduction in number of trustees; procedure.

(1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees shall be elected. The board of trustees shall have five members except as provided in subsection (2) of this section. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. If such person will serve on the board of trustees as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the filing shall indicate that fact and shall include appropriate documentation evidencing such fact. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. If a person filing for the office of trustee is a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district, the name of such entity shall accompany the name of the candidate on the ballot in the following form: (Name of candidate) to represent (name of entity) as a member of the board. The name of each candidate shall appear on only one ballot.

The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. A write-in candidate for the office of trustee who will serve as a

designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district shall not be elected to the office of trustee unless (a) each vote is accompanied by the name of the entity which the candidate will represent and (b) within ten days after the date of the election the candidate provides the county clerk or election commissioner with appropriate documentation evidencing his or her representation of the entity. Votes cast which do not carry such accompanying designation shall not be counted.

A trustee shall be an owner of real estate located in the district or shall be a person designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. Notice of the date of the election shall be mailed by the clerk of the district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner or county clerk, which date shall be not more than eighty days prior to the election.

(2)(a) For any sanitary and improvement district, a person whose ownership or right to vote becomes of record or is received after the date specified pursuant to subsection (1) of this section may vote when such person establishes his or her right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district.

(b) This subdivision applies to a district until the board of trustees amends its articles of association pursuant to subdivision (2)(d) of this section. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, and at the election held six years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this

section. If there are not any legal property owners resident within such district or if not less than ninety percent of the area of the district is owned for other than residential uses, the five members shall be elected by the legal property owners of all property within such district as provided in this section.

(c) Any public, private, or municipal corporation owning any land or lot in the district may vote at an election the same as an individual. If more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, members of a limited liability company, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or irrevocable trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(d) For any sanitary and improvement district which has been in existence for at least ten years, which has less than seventy property owners entitled to vote for trustees, which has at least two resident property owners, and in which less than ten percent of the area of the district is owned for other than residential uses, the board of trustees may amend its articles of association as provided in section 31-740.01 to provide for a reduction in the number of trustees on the board from five members to three members to be effective at the beginning of the term of office for the board of trustees elected at the next election. At the next election and at each election thereafter, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and one member shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for the office of trustee to be filled by election of all property owners. For the office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the election commissioner or county clerk, which date shall not be more than eighty days prior to the election. The ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned to the election commissioner or county clerk no later than 5 p.m. on the date set for the election.

Source: Laws 1949, c. 78, § 9, p. 198; Laws 1971, LB 188, § 3; Laws 1974, LB 757, § 10; Laws 1976, LB 313, § 14; Laws 1977, LB 228, § 2; Laws 1981, LB 37, § 1; Laws 1982, LB 359, § 1; Laws 1983, LB 433, § 71; Laws 1984, LB 1105, § 1; Laws 1986, LB 483, § 1; Laws 1987, LB 587, § 1; Laws 1987, LB 652, § 4; Laws 1992, LB 764, § 2; Laws 1993, LB 121, § 195; Laws 1997, LB 874, § 9; Laws 1999, LB 740, § 1; Laws 2005, LB 401, § 1; Laws 2009, LB412, § 1; Laws 2015, LB116, § 1; Laws 2015, LB149, § 1.

Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB116, section 1, with LB149, section 1, to reflect all amendments.

Cross References

Condominium Property Act, see section 76-801.

Nebraska Condominium Act, see section 76-825.

31-735.06 Appointment of administrator; election of trustees; special election; when held.

Notwithstanding the appointment of an administrator for any district pursuant to sections 31-771 to 31-780, special elections shall be held for the election of members of the board of trustees for such district in the same manner and at the same time as such elections would be held under sections 31-735 to 31-735.03. In a district for which such an administrator has been appointed when the board of trustees of such district is not functioning, the administrator shall cause a special election of trustees to be held within sixty days after the issuance of a certificate of appointment of such administrator, at which election a board of trustees shall be elected to a term of office which shall expire on the first Tuesday of the second September following the appointment of such administrator. The board of trustees shall have five members unless the board has amended its articles of association to decrease the number of trustees on the board to three members pursuant to subdivision (2)(d) of section 31-735.

Source: Laws 1982, LB 868, § 5; Laws 2015, LB116, § 2.

Effective date August 30, 2015.

31-740 District; trustees or administrator; powers; plans or contracts; approval required; hearing; contracts authorized; audit; failure to perform audit; effect; connection with city sewerage system; rental or use charge; levy; special assessment.

(1) The board of trustees or the administrator of any district organized under sections 31-727 to 31-762 shall have power to provide for establishing, maintaining, and constructing gas and electric service lines and conduits, an emergency management warning system, water mains, sewers, and disposal plants and disposing of drainage, waste, and sewage of such district in a satisfactory manner; for establishing, maintaining, and constructing sidewalks, public roads, streets, and highways, including grading, changing grade, paving, repaving, graveling, regrading, widening, or narrowing roads, resurfacing or relaying existing pavement, or otherwise improving any road, street, or highway within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin; for establishing, maintaining, and constructing public waterways, docks, or wharfs, and related appurtenances; and for constructing and contracting for the construction of dikes and levees for flood protection for the district.

(2) The board of trustees or the administrator of any district may contract for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, for solid waste collection services, and for electricity for street lighting for the public streets and highways within the district and shall have power to provide for building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities, and, when permitted by section 31-727, for contracting with other sanitary and improvement districts for the building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, and for contracting for any public purpose specifically authorized in this section. Power to construct clubhouses and similar facilities for the giving of private parties within the zoning jurisdiction of any city or village is not included in the powers granted in this section. Any sewer system established shall be approved by the Department of Health and Human Services. Any contract entered into on or after August 30, 2015, for solid waste collection services shall include a provision that, in the event the district is annexed in whole or in part by a city or village, the contract shall be canceled and voided upon such annexation as to the annexed areas.

(3) Prior to the installation of any of the improvements or services provided for in this section, the plans or contracts for such improvements or services, other than for public parks, playgrounds, and recreational facilities, whether a district acts separately or jointly with other districts as permitted by section 31-727, shall be approved by the public works department of any municipality when such improvements or any part thereof or services are within the area of the zoning jurisdiction of such municipality. If such improvements or services are without the area of the zoning jurisdiction of any municipality, plans for such improvements shall be approved by the county board of the county in which such improvements are located. Plans and exact costs for public parks, playgrounds, and recreational facilities shall be approved by resolution of the governing body of such municipality or county after a public hearing. Purchases of public parks, playgrounds, and recreational facilities so approved may be completed and shall be valid notwithstanding any interest of any trustee of the district in the transaction. Such approval shall relate to conformity with the master plan and the construction specifications and standards established by

such municipality or county. When no master plan and construction specifications and standards have been established, such approval shall not be required. When such improvements are within the area of the zoning jurisdiction of more than one municipality, such approval shall be required only from the most populous municipality, except that when such improvements are furnished to the district by contract with a particular municipality, the necessary approval shall in all cases be given by such municipality. The municipality or county shall be required to approve plans for such improvements and shall enforce compliance with such plans by action in equity.

(4) The district may construct its sewage disposal plant and other sewerage or water improvements, or both, in whole or in part, inside or outside the boundaries of the district and may contract with corporations or municipalities for disposal of sewage and use of existing sewerage improvements and for a supply of water for fire protection and for resale to residents of the district. It may also contract with any corporation, public power district, electric membership or cooperative association, or municipality for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, for solid waste collection services, for the installation, maintenance, and cost of operating a system of street lighting upon the public streets and highways within the district, for installation, maintenance, and operation of a water system, or for the installation, maintenance, and operation of electric service lines and conduits, and to provide water service for fire protection and use by the residents of the district. It may also contract with any corporation, municipality, or other sanitary and improvement district, as permitted by section 31-727, for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting parties. It may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district is located for intersection and traffic control improvements, which improvements serve or benefit the district and which may be within or without the corporate boundaries of the district, and for any public purpose specifically authorized in this section.

(5) Each sanitary and improvement district shall have the books of account kept by the board of trustees of the district examined and audited by a certified public accountant or a public accountant for the year ending June 30 and shall file a copy of the audit with the office of the Auditor of Public Accounts by December 31 of the same year. Such audits may be waived by the Auditor of Public Accounts upon proper showing by the district that the audit is unnecessary. Such examination and audit shall show (a) the gross income of the district from all sources for the previous year, (b) the amount spent for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, (c) the amount spent for solid waste collection services, (d) the amount spent for sewage disposal, (e) the amount expended on water mains, (f) the gross amount of sewage processed in the district, (g) the cost per thousand gallons of processing sewage, (h) the amount expended each year for (i) maintenance and repairs, (ii) new equipment, (iii) new construction work, and (iv) property purchased, (i) a detailed statement of all items of expense, (j) the number of employees, (k) the salaries and fees paid employees, (l) the total amount of taxes levied upon the property within the district, and (m) all other facts necessary to give an accurate and comprehensive view of the cost of

carrying on the activities and work of such sanitary and improvement district. The reports of all audits provided for in this section shall be and remain a part of the public records in the office of the Auditor of Public Accounts. The expense of such audits shall be paid out of the funds of the district. The Auditor of Public Accounts shall be given access to all books and papers, contracts, minutes, bonds, and other documents and memoranda of every kind and character of such district and be furnished all additional information possessed by any present or past officer or employee of any such district, or by any other person, that is essential to the making of a comprehensive and correct audit.

(6) If any sanitary and improvement district fails or refuses to cause such annual audit to be made of all of its functions, activities, and transactions for the fiscal year within a period of six months following the close of such fiscal year, unless such audit has been waived, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such district, appoint a certified public accountant or public accountant to conduct the annual audit of the district and the fee for such audit shall become a lien against the district.

(7) Whenever the sanitary sewer system or any part thereof of a sanitary and improvement district is directly or indirectly connected to the sewerage system of any city, such city, without enacting an ordinance or adopting any resolution for such purpose, may collect such city's applicable rental or use charge from the users in the sanitary and improvement district and from the owners of the property served within the sanitary and improvement district. The charges of such city shall be charged to each property served by the city sewerage system, shall be a lien upon the property served, and may be collected from the owner or the person, firm, or corporation using the service. If the city's applicable rental or service charge is not paid when due, such sum may be recovered by the municipality in a civil action or it may be assessed against the premises served as a special assessment and may be assessed by such city and collected and returned in the same manner as other municipal special assessments are enforced and collected. When any such assessment is levied, it shall be the duty of the city clerk to deliver a certified copy of the ordinance to the county treasurer of the county in which the premises assessed are located and such county treasurer shall collect the assessment as provided by law and return the assessment to the city treasurer. Funds of such city raised from such charges shall be used by it in accordance with laws applicable to its sewer service rental or charges. The governing body of any city may make all necessary rules and regulations governing the direct or indirect use of its sewerage system by any user and premises within any sanitary and improvement district and may establish just and equitable rates or charges to be paid to such city for use of any of its disposal plants and sewerage system. The board of trustees may, in connection with the issuance of any warrants or bonds of the district, agree to make a specified minimum levy on taxable property in the district to pay, or to provide a sinking fund to pay, principal and interest on warrants and bonds of the district for such number of years as the board may establish at the time of making such agreement and may agree to enforce, by foreclosure or otherwise as permitted by applicable laws, the collection of special assessments levied by the district. Such agreements may contain provisions granting to creditors and others the right to enforce and carry out the agreements on behalf of the district and its creditors.

(8) The board of trustees or administrator shall have power to sell and convey real and personal property of the district on such terms as it or he or she shall

determine, except that real estate shall be sold to the highest bidder at public auction after notice of the time and place of the sale has been published for three consecutive weeks prior to the sale in a newspaper of general circulation in the county. The board of trustees or administrator may reject such bids and negotiate a sale at a price higher than the highest bid at the public auction at such terms as may be agreed.

Source: Laws 1949, c. 78, § 14, p. 200; Laws 1955, c. 117, § 5, p. 314; Laws 1961, c. 142, § 5, p. 413; Laws 1963, c. 170, § 1, p. 585; Laws 1965, c. 158, § 1, p. 507; Laws 1967, c. 188, § 2, p. 515; Laws 1971, LB 188, § 4; Laws 1972, LB 1387, § 2; Laws 1973, LB 245, § 5; Laws 1974, LB 629, § 1; Laws 1974, LB 757, § 12; Laws 1976, LB 313, § 3; Laws 1979, LB 187, § 144; Laws 1982, LB 868, § 8; Laws 1985, LB 207, § 3; Laws 1994, LB 501, § 3; Laws 1996, LB 43, § 6; Laws 1996, LB 1044, § 92; Laws 1997, LB 589, § 1; Laws 1997, LB 874, § 10; Laws 2002, LB 176, § 2; Laws 2007, LB296, § 50; Laws 2008, LB768, § 2; Laws 2015, LB324, § 4; Laws 2015, LB361, § 52.
Effective date August 30, 2015.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB324, section 4, with LB361, section 52, to reflect all amendments.

31-749 Improvements; engineer; certificate of acceptance; cost; statement; special assessment; notices; hearing; appeal; hearing in district court.

After (1) the completion of any work or purchase, (2) acquiring a sewer or water system, or both, or public parks, playgrounds, or recreational facilities, (3) contracting, as permitted by section 31-727, with other sanitary and improvement districts to acquire public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or gas or electric service lines or conduits, or (4) completion of the work on (a) a system of sidewalks, public roads, streets, highways, public waterways, docks, or wharfs and related appurtenances or (b) levees for flood protection for the district, the engineer shall file with the clerk of the district a certificate of acceptance which shall be approved by the board of trustees or the administrator by resolution. The board of trustees or administrator shall then require the engineer to make a complete statement of all the costs of any such improvements, a plat of the property in the district, and a schedule of the amount proposed to be assessed against each separate piece of property in such district. The statement, plat, and schedule shall be filed with the clerk of the district within sixty days after the date of acceptance of: The work, purchase, or acquisition of a sewer or water system, or both; the work on a system of sidewalks, public roads, streets, highways, public waterways, docks, or wharfs and related appurtenances, or dikes and levees for flood protection for the district; or as permitted by section 31-727, the acquisition of public parks, playgrounds, and recreational facilities whether acquired separately or jointly with other districts. The board of trustees or administrator shall then order the clerk to give notice that such statement, plat, and schedules are on file in his or her office and that all objections thereto or to prior proceedings on account of errors, irregularities, or inequalities not made in writing and filed with the clerk of the district within twenty days after the first publication of such notice shall be deemed to have been waived. Such notice shall be given by publication the same day each week two consecutive weeks in a newspaper of general

circulation published in the county where the district was organized and by handbills posted along the line of the work. Such notice shall state the time and place where any objections, filed as provided in this section, shall be considered by the board of trustees or administrator. The cost of such improvements in the district which are within the area of the zoning jurisdiction of any municipality shall be levied as special assessments to the extent of special benefits to the property and to the extent the costs of such improvements are assessed in such municipality. The complete statement of costs and the schedule of proposed special assessments for such improvements which are within the zoning jurisdiction of such municipality against each separate piece of property in districts located within the zoning jurisdiction of such municipality shall be given to such municipality within seven days after the first publication of notice of statement, plat, and schedules. When such improvements are within the area of the zoning jurisdiction of more than one municipality, such proposed special assessments schedule and statement need be given only to the most populous municipality. Such municipality shall have the right to be heard, and it shall have the right of appeal from a final determination by the board of trustees or administrator against objections which such city has filed. Notice of the proposed special assessments for such improvements against each separate piece of property shall be given to each owner of record thereof within five days after the first publication of notice of statement, plat, and schedules and, within five days after the first publication of such notice, a copy thereof, along with statements of costs and schedules of proposed special assessments, shall be given to each person or company who, pursuant to written contract with the district, has acted as underwriter or fiscal agent for the district in connection with the sale or placement of warrants or bonds issued by the district. Each owner shall have the right to be heard, and shall have the right of appeal from the final determination made by the board of trustees or administrator. Any person or any such municipality feeling aggrieved may appeal to the district court by petition within twenty days after such a final determination. The court shall hear and determine such appeal in a summary manner as in a case in equity and without a jury and shall increase or reduce the special assessments as the same may be required to provide that the special assessments shall be to the full extent of special benefits, and to make the apportionment of benefits equitable.

Source: Laws 1949, c. 78, § 23, p. 204; Laws 1955, c. 117, § 9, p. 317; Laws 1961, c. 142, § 7, p. 415; Laws 1965, c. 157, § 1, p. 504; Laws 1967, c. 190, § 1, p. 524; Laws 1971, LB 188, § 5; Laws 1973, LB 245, § 7; Laws 1974, LB 757, § 14; Laws 1976, LB 313, § 5; Laws 1979, LB 252, § 4; Laws 1982, LB 868, § 17; Laws 2015, LB361, § 53.

Effective date August 30, 2015.

(c) DISTRICT BOUNDARIES

31-763 Annexation of territory by a city or village; effect on certain contracts.

(1) Whenever any city or village annexes all the territory within the boundaries of any sanitary and improvement district organized under the provisions of sections 31-701 to 31-726.01, or under sections 31-727 to 31-762, or any road improvement district organized under sections 39-1601 to 39-1636, or any fire protection district authorized under Chapter 35, article 5, the district shall

merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Any special assessments which the district was authorized to levy, assess, relevel, or reassess, but which were not levied, assessed, relevelled, or reassessed, at the time of the merger, for improvements made by it or in the process of construction or contracted for may be levied, assessed, relevelled, or reassessed by the annexing city or village to the same extent as the district may have levied or assessed but for the merger. Nothing in this section shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound. No district so annexed shall have power to levy any special assessments after the effective date of such annexation.

(2) Any contract entered into on or after August 30, 2015, by a sanitary and improvement district for solid waste collection services shall, upon annexation of such district by a city or village, be canceled and voided.

Source: Laws 1959, c. 130, § 1, p. 467; Laws 1969, c. 255, § 1, p. 925; Laws 2015, LB324, § 5.
Effective date August 30, 2015.

31-766 Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited; effect on certain contracts.

(1) If only a part of the territory within any sanitary and improvement district, any road improvement district, or any fire protection district is annexed by a city or village, the road improvement district or fire protection district acting through its trustees or the sanitary and improvement district acting through its trustees or administrator and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, contracts, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, contracts, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following annexation. In the event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 31-763 to 31-766 when the city annexes the entire territory within the district, and the trustees or administrator shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 31-764. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or

employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto. Nothing contained in this section shall authorize any district to levy any special assessments within the annexed area after the effective date of annexation.

(2) Any contract entered into on or after August 30, 2015, by a sanitary and improvement district for solid waste collection services shall, upon annexation of all or part of such district by a city or village, be canceled and voided as to the annexed areas.

Source: Laws 1959, c. 130, § 4, p. 469; Laws 1969, c. 255, § 4, p. 927; Laws 1982, LB 868, § 28; Laws 1994, LB 630, § 6; Laws 2015, LB324, § 6.

Effective date August 30, 2015.

CHAPTER 32 ELECTIONS

Article.

1. General Provisions and Definitions. 32-101.
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 - (b) County Election Officials. 32-208.
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3. Registration of Voters. 32-304, 32-330.
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ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Section

32-101. Act, how cited.

32-101 Act, how cited.

Sections 32-101 to 32-1551 shall be known and may be cited as the Election Act.

Source: Laws 1994, LB 76, § 1; Laws 1995, LB 337, § 1; Laws 1995, LB 514, § 1; Laws 1996, LB 964, § 1; Laws 1997, LB 764, § 8; Laws 2001, LB 768, § 1; Laws 2002, LB 1054, § 7; Laws 2003, LB 181, § 1; Laws 2003, LB 358, § 1; Laws 2003, LB 359, § 1; Laws 2003, LB 521, § 3; Laws 2005, LB 401, § 2; Laws 2005, LB 566, § 1; Laws 2010, LB951, § 1; Laws 2013, LB299, § 1; Laws 2013, LB349, § 1; Laws 2014, LB661, § 1; Laws 2014, LB946, § 3; Laws 2015, LB575, § 5.

Operative date August 30, 2015.

ARTICLE 2

ELECTION OFFICIALS

(b) COUNTY ELECTION OFFICIALS

Section

- 32-208. Election commissioner; qualifications; appointment to elective office; effect.
- (c) COUNTIES WITH ELECTION COMMISSIONERS
- 32-227. Election workers; wages; waiver agreeing not to be paid; certain contracts authorized.
- 32-228. Election worker; notice of appointment; exemption from service; failure to serve; penalty.

(b) COUNTY ELECTION OFFICIALS

32-208 Election commissioner; qualifications; appointment to elective office; effect.

The election commissioner in counties having a population of more than one hundred thousand inhabitants shall be a registered voter, a resident of such county for at least one year, and of good moral character and integrity and capacity. No person who is a candidate for any elective office or is a deputy, clerk, or employee of any person who is a candidate for any elective office shall be eligible for the office of election commissioner. The election commissioner shall not hold any other elective office or become a candidate for an elective office during his or her term of office or within thirty days after leaving office. An election commissioner may be appointed to an elective office during his or her term of office as election commissioner, and acceptance of such appointment shall be deemed to be his or her resignation from the office of election commissioner.

Source: Laws 1994, LB 76, § 28; Laws 1997, LB 764, § 14; Laws 2001, LB 226, § 1; Laws 2003, LB 707, § 1; Laws 2011, LB449, § 1; Laws 2015, LB575, § 6.
Operative date August 30, 2015.

(c) COUNTIES WITH ELECTION COMMISSIONERS

32-227 Election workers; wages; waiver agreeing not to be paid; certain contracts authorized.

(1) Except as otherwise provided in subsections (2) and (3) of this section, the judges and clerks of election, precinct and district inspectors, and other temporary election workers shall receive wages at no less than the minimum rate set in section 48-1203 for each hour of service rendered. The election commissioner shall determine the rate of pay and may vary the rate based on the duties of each position. Each such election worker shall sign an affidavit stating the number of hours he or she has worked.

(2) Any judge or clerk of election, precinct or district inspector, or other temporary election worker may choose not to be paid for the hours he or she works. An election worker that chooses not to be paid shall sign a waiver agreeing not to be paid for each election for which he or she chooses not to be paid.

(3) Any judge or clerk of election, precinct or district inspector, or other temporary election worker may choose to have his or her election pay used by the election commissioner to contract with an organization authorized by the election commissioner to recruit election workers if the election commissioner contracts with such an organization. To be eligible to enter into such a contract, the organization shall be exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code, as defined in section 49-801.01.

Source: Laws 1994, LB 76, § 47; Laws 2002, LB 1054, § 9; Laws 2015, LB575, § 7.
Operative date August 30, 2015.

32-228 Election worker; notice of appointment; exemption from service; failure to serve; penalty.

(1) The election commissioner shall notify each person appointed as a judge or clerk of election, precinct inspector, district inspector, member of a counting board, or member of a canvassing board of the appointment by letter. Such letter shall be mailed at least fifteen days prior to the required reporting date for each statewide primary and general election. Each appointee shall, at the time fixed in the notice of appointment, report to the office of the election commissioner or other designated location to complete any informational forms and receive training regarding his or her duties. The training shall include instruction as required by the Secretary of State and any other training deemed necessary by the election commissioner. Each appointee, if found qualified and unless excused by reason of ill health or other good and sufficient reason, shall serve for the term of his or her appointment.

(2) No person who is a qualified prospective election worker is exempt from being appointed for a term of election service, except that any person who is seventy years of age or older and who requests to be exempted from such service at the time the election worker questionnaire form is filed with the election commissioner shall be exempt from election service.

(3) An appointee who fails to serve for the term of his or her appointment, unless excused by reason of ill health or other good and sufficient reason, is guilty of a Class V misdemeanor. The election commissioner shall submit the names of appointees violating this subsection to the local law enforcement agency for citation pursuant to sections 32-1549 and 32-1550.

Source: Laws 1994, LB 76, § 48; Laws 1997, LB 764, § 21; Laws 2002, LB 1054, § 10; Laws 2015, LB575, § 8.
Operative date August 30, 2015.

ARTICLE 3

REGISTRATION OF VOTERS

Section

- 32-304. Registration of electors electronically; application process; application; contents; Secretary of State; Department of Motor Vehicles; duties.
32-330. Voter registration register; public record; examination; lists of registered voters; availability.

32-304 Registration of electors electronically; application process; application; contents; Secretary of State; Department of Motor Vehicles; duties.

(1) The Secretary of State in conjunction with the Department of Motor Vehicles shall, on or before September 1, 2015, develop and implement a registration application process which may be used statewide to register to vote and update voter registration records electronically using the Secretary of State's web site. An applicant who has a valid Nebraska motor vehicle operator's license or state identification card may use the application process to register to vote or to update his or her voter registration record with changes in his or her personal information or other information related to his or her eligibility to vote. For each electronic application, the Secretary of State shall obtain a copy of the electronic representation of the applicant's signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration.

(2) The application shall contain substantially all the information provided in section 32-312 and the following informational statements:

(a) An applicant who submits this application electronically is affirming that the information in the application is true. Any applicant who submits this application electronically knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to five years imprisonment, a fine of up to ten thousand dollars, or both;

(b) An applicant who submits this application electronically is agreeing to the use of his or her signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration;

(c) To vote at the polling place on election day, the completed application must be submitted on or before the third Friday before the election; and

(d) The election commissioner or county clerk will, upon receipt of the application for registration, send an acknowledgment of registration to the applicant indicating whether the application is proper or not.

Source: Laws 2014, LB661, § 3; Laws 2015, LB575, § 9.
Operative date May 20, 2015.

32-330 Voter registration register; public record; examination; lists of registered voters; availability.

(1) The voter registration register shall be a public record. Any person may examine the register at the office of the election commissioner or county clerk, but no person other than the election commissioner, county clerk, or law enforcement shall be allowed to make copies of the register. Copies of the register shall only be used for list maintenance as provided in section 32-329 or law enforcement purposes. The electronic records of the original voter registrations created pursuant to section 32-301 may constitute the voter registration register. The election commissioner or county clerk shall withhold information in the register designated as confidential under section 32-331.

(2) The election commissioner or county clerk shall make available for purchase a list of registered voters that contains the information required under section 32-312 and, if requested, a list that only contains registered voters who have voted in an election held more than thirty days prior to the request for the list. The election commissioner or county clerk shall establish the price of the lists at a rate that fairly covers the actual production cost of the lists, not to exceed three cents per name. Lists shall be used solely for purposes related to elections, political activities, voter registration, law enforcement, or jury selection. Lists shall not be used for commercial purposes.

(3) Any person who acquires a list of registered voters under subsection (2) of this section shall take and subscribe to an oath in substantially the following form:

I hereby swear that I will use the list of registered voters of County, Nebraska, only for the purposes prescribed in section 32-330 and for no other purpose and that I will not permit the use or copying of such list for unauthorized purposes.

I hereby declare under the penalty of election falsification that the statements above are true to the best of my knowledge.

The penalty for election falsification is a Class IV felony.

.....

(Signature of person acquiring list)

Subscribed and sworn to before me this day of 20.....

.....

(Name of officer)

.....

(Official title of officer)

(4) The election commissioner or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters and their addresses to the Clerk of the United States District Court for the District of Nebraska. Such list shall be provided no later than December 31 of each even-numbered year.

(5) The election commissioner or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters and their addresses to the state party headquarters of each political party and to the county chairperson of each political party. Such list shall be provided no later than thirty-five days prior to the statewide primary and statewide general elections.

Source: Laws 1994, LB 76, § 92; Laws 1995, LB 514, § 2; Laws 1997, LB 764, § 45; Laws 1999, LB 234, § 8; Laws 2015, LB575, § 10. Operative date August 30, 2015.

ARTICLE 5

OFFICERS AND ISSUES

(a) OFFICES AND OFFICEHOLDERS

Section

32-528. County board of commissioners; terms; qualifications; partisan ballot; nomination and election by district; change of number of commissioners; procedure.

(c) VACANCIES

32-567. Vacancies; offices listed; how filled.

32-569. Vacancies in city and village elected offices; procedure for filling.

32-574. Vacancies.

(a) OFFICES AND OFFICEHOLDERS

32-528 County board of commissioners; terms; qualifications; partisan ballot; nomination and election by district; change of number of commissioners; procedure.

(1) In counties having a county board of three commissioners, two commissioners shall be elected at the statewide general election in 1994 and each four years thereafter, and one commissioner shall be elected at the statewide general election in 1996 and each four years thereafter. In counties having a county board of five commissioners, three commissioners shall be elected at the statewide general election in 1994 and each four years thereafter, and two commissioners shall be elected at the statewide general election in 1996 and each four years thereafter. In counties having a county board of seven or more commissioners, one commissioner shall be elected in each odd-numbered

commissioner district at the statewide general election in 1994 and each four years thereafter, and one commissioner shall be elected in each even-numbered commissioner district at the statewide general election in 1996 and each four years thereafter.

(2) Except for commissioners first elected after the county adopts the commissioner form of government or has increased the number of commissioners, the term of each county commissioner shall be four years or until his or her successor is elected and qualified. At the first election held to choose the board of commissioners in any county having three commissioners, the person having the highest number of votes shall serve for four years and the two receiving the next highest number of votes shall serve for two years, and if any three or more persons have the same number of votes, their terms of office shall be determined by the county canvassing board. The county commissioners shall meet the qualifications found in section 23-150. Nothing in this section shall be construed to prohibit the reelection of a commissioner holding office if the commissioner is reelected to represent his or her respective district. The county commissioners shall be elected on the partisan ballot.

(3)(a) In counties having not more than one hundred fifty thousand inhabitants, one commissioner shall be nominated and elected from each district by the registered voters of the district.

(b) In counties having a population of more than one hundred fifty thousand but not more than three hundred thousand inhabitants, one commissioner shall be nominated and elected from each district by the registered voters of the district as provided in subsection (5) of this section.

(c) In counties having more than three hundred thousand inhabitants, one commissioner shall be nominated and elected from each district by the registered voters of the district.

(4) In counties in which a majority has voted to have five commissioners as provided in section 23-148, the three commissioners of such county whose terms of office will expire after the election shall continue in office until the expiration of the terms for which they were elected and until their successors are elected and qualified. Two commissioners shall be appointed pursuant to sections 32-567 and 32-574 to serve until the first Thursday after the first Tuesday in January following the next statewide general election. At the next statewide general election, commissioners shall be elected to fill the positions of any commissioners appointed under this section. At the first primary election after such appointments, filings shall be accepted for terms of two years and for terms of four years so that two commissioners will be elected to four-year terms at one election and three commissioners will be elected to four-year terms at the next election.

(5) In counties having more than one hundred fifty thousand but not more than three hundred thousand inhabitants:

(a) At the primary election in 2010, one commissioner shall be nominated from each odd-numbered district, and at the ensuing general election, one commissioner shall be elected from each odd-numbered district. Their successors shall be nominated and elected every four years thereafter; and

(b) At the primary election in 2012, one commissioner shall be nominated from each even-numbered district, and at the ensuing general election, one

commissioner shall be elected from each even-numbered district. Their successors shall be nominated and elected every four years thereafter.

Source: Laws 1994, LB 76, § 124; Laws 2008, LB268, § 2; Laws 2015, LB575, § 11.

Operative date August 30, 2015.

(c) VACANCIES

32-567 Vacancies; offices listed; how filled.

Vacancies in office shall be filled as follows:

- (1) In state and judicial district offices and in the membership of any board or commission created by the state when no other method is provided, by the Governor;
- (2) In county offices, by the county board;
- (3) In the membership of the county board, by the county clerk, county attorney, and county treasurer;
- (4) In the membership of the city council, according to section 32-568 or 32-569, as applicable;
- (5) In township offices, by the township board or, if there are two or more vacancies on the township board, by the county board;
- (6) In offices in public power and irrigation districts, according to section 70-615;
- (7) In offices in natural resources districts, according to section 2-3215;
- (8) In offices in community college areas, according to section 85-1514;
- (9) In offices in educational service units, according to section 79-1217;
- (10) In offices in hospital districts, according to section 23-3534;
- (11) In offices in metropolitan utilities districts, according to section 14-2104;
- (12) In membership on airport authority boards, according to section 3-502, 3-611, or 3-703, as applicable;
- (13) In membership on the board of trustees of a road improvement district, according to section 39-1607;
- (14) In membership on the council of a municipal county, by the council; and
- (15) For learning community coordinating councils, according to section 32-546.01.

Source: Laws 1994, LB 76, § 163; Laws 1996, LB 900, § 1046; Laws 2001, LB 142, § 38; Laws 2007, LB641, § 1; Laws 2014, LB946, § 10; Laws 2015, LB575, § 12.

Operative date August 30, 2015.

Cross References

Public Service Commission, vacancy, how filled, see section 75-103.

State Board of Education, vacancy, how filled, see section 79-314.

32-569 Vacancies in city and village elected offices; procedure for filling.

(1)(a) Except as otherwise provided in subsection (2) or (3) of this section or section 32-568, vacancies in city and village elected offices shall be filled by the mayor and council or board of trustees for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from the death of the incum-

bent, shall be in writing and presented to the council or board of trustees at a regular or special meeting and shall appear as a part of the minutes of such meeting. The council or board of trustees shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation within the city or village or by posting in three public places in the city or village the office vacated and the length of the unexpired term.

(b) The mayor or chairperson of the board shall call a special meeting of the council or board of trustees or place the issue of filling such vacancy on the agenda at the next regular meeting at which time the mayor or chairperson shall submit the name of a qualified registered voter to fill the vacancy for the balance of the unexpired term. The regular or special meeting shall occur upon the death of the incumbent or within four weeks after the meeting at which such notice of vacancy has been presented. The council or board of trustees shall vote upon such nominee, and if a majority votes in favor of such nominee, the vacancy shall be declared filled. If the nominee fails to receive a majority of the votes, the nomination shall be rejected and the mayor or chairperson shall at the next regular or special meeting submit the name of another qualified registered voter to fill the vacancy. If the subsequent nominee fails to receive a majority of the votes, the mayor or chairperson shall continue at such meeting to submit the names of qualified registered voters in nomination and the council or board of trustees shall continue to vote upon such nominations at such meeting until the vacancy is filled. The mayor shall cast his or her vote for or against the nominee in the case of a tie vote of the council. All council members and trustees present shall cast a ballot for or against the nominee. Any member of the city council or board of trustees who has been appointed to fill a vacancy on the council or board shall have the same rights, including voting, as if such person were elected.

(2) The mayor and council or chairperson and board of trustees may, in lieu of filling a vacancy in a city or village elected office as provided in subsection (1) of this section or subsection (3) of section 32-568, call a special city election to fill such vacancy.

(3) If vacancies exist in the offices of one-half or more of the members of a city council or village board, the Secretary of State shall conduct a special city election to fill such vacancies.

Source: Laws 1994, LB 76, § 165; Laws 1997, LB 734, § 3; Laws 2006, LB 1067, § 2; Laws 2015, LB575, § 14.
Operative date August 30, 2015.

32-574 Vacancies.

Unless otherwise provided by law, all vacancies shall be filled within forty-five days after the vacancy occurs unless good cause is shown that the requirement imposes an undue burden.

Source: Laws 2015, LB575, § 13.
Operative date August 30, 2015.

ARTICLE 6

FILING AND NOMINATION PROCEDURES

Section

32-607. Candidate filing forms; contents; filing officers.

32-612. Change of political party affiliation; requirements for candidacy; prohibited acts.

Section

32-615. Write-in candidate; requirements.

32-630. Petitions; signers and circulators; duties; prohibited acts.

32-607 Candidate filing forms; contents; filing officers.

All candidate filing forms shall contain the following statement: I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected. Candidate filing forms shall also contain the candidate's name; residence address; mailing address if different from the residence address; telephone number; office sought; and party affiliation if the office sought is a partisan office. Candidate filing forms shall be filed with the following filing officers:

(1) For candidates for national, state, or congressional office, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resources districts, members of the boards of educational service units, members of governing boards of community colleges, delegates to national conventions, and other offices filled by election held in more than one county and judges desiring retention, in the office of the Secretary of State;

(2) For officers elected within a county, in the office of the election commissioner or county clerk;

(3) For officers in school districts which include land in adjoining counties, in the office of the election commissioner or county clerk of the county in which the greatest number of registered voters entitled to vote for the officers reside; and

(4) For city or village officers, in the office of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 175; Laws 1997, LB 764, § 55; Laws 1999, LB 571, § 2; Laws 2007, LB603, § 3; Laws 2009, LB501, § 2; Laws 2010, LB325, § 3; Laws 2015, LB575, § 15.

Operative date August 30, 2015.

32-612 Change of political party affiliation; requirements for candidacy; prohibited acts.

(1) A change of political party affiliation by a registered voter so as to affiliate with the political party named in the candidate filing form or in an affidavit as a write-in candidate pursuant to section 32-615 after the first Friday in December prior to the statewide primary election shall not be effective to meet the requirements of section 32-610 or 32-611 or subsection (4) of this section, except that any person may change his or her political party affiliation after the first Friday in December prior to the statewide primary election to become a candidate of a new political party which has successfully completed the petition process required by section 32-716.

(2) No registered voter, candidate, or proposed candidate shall swear falsely as to political party affiliation or shall swear that he or she affiliates with two or more political parties. Any candidate who swears falsely as to political party affiliation or swears that he or she affiliates with two or more political parties shall not be the candidate of such party and shall not be entitled to assume the office for which he or she filed even if he or she receives a majority or plurality of the votes therefor at the following general election.

(3) The name of a candidate shall not appear printed on more than one political party ballot. A candidate who is the nominee of one political party shall not accept the nomination of another political party.

(4) In order to count write-in votes on a political party ballot in the primary election, the candidate who receives the votes must be a registered voter of that political party unless the political party allows candidates not affiliated with the party by not adopting a rule under section 32-702.

Source: Laws 1994, LB 76, § 180; Laws 1997, LB 764, § 58; Laws 2007, LB646, § 4; Laws 2015, LB575, § 16.
Operative date August 30, 2015.

32-615 Write-in candidate; requirements.

(1) Except as otherwise provided in subsection (2) of this section, any candidate engaged in or pursuing a write-in campaign shall file a notarized affidavit of his or her intent together with the receipt for any filing fee with the filing officer as provided in section 32-608 no earlier than December 1 and no later than the second Friday prior to the election.

(2) For any county office elected pursuant to sections 32-517 to 32-529 which is subject to subdivision (1)(b) of section 32-811, a candidate may engage in or pursue a write-in campaign if he or she files a notarized affidavit of his or her intent together with the receipt for the filing fee with the filing officer as provided in section 32-608 on or before March 3 of the year of the statewide primary election. If such an affidavit is filed as prescribed, the election commissioner or county clerk shall place that county office on the statewide primary election ballot with the names of the candidate properly filed for the nomination of the applicable political party and a line for write-in candidates.

(3) A candidate submitting an affidavit under this section for a partisan office shall be a registered voter of the political party named in the affidavit unless the political party allows candidates not affiliated with the party by not adopting a rule under section 32-702.

(4) A candidate who has been defeated as a candidate in the primary election or defeated as a write-in candidate in the primary election shall not be eligible as a write-in candidate for the same office in the general election unless (a) a vacancy on the ballot exists pursuant to section 32-625 or (b) the candidate was a candidate for an office described in sections 32-512 to 32-550 and the candidate lost the election as a result of a determination pursuant to section 32-1122 in the case of a tie vote.

(5) A candidate who files a notarized affidavit shall be entitled to all write-in votes for the candidate even if only the last name of the candidate has been written if such last name is reasonably close to the proper spelling.

Source: Laws 1994, LB 76, § 183; Laws 2002, LB 251, § 4; Laws 2003, LB 537, § 2; Laws 2011, LB449, § 5; Laws 2014, LB56, § 1; Laws 2014, LB144, § 2; Laws 2015, LB575, § 17.
Operative date August 30, 2015.

32-630 Petitions; signers and circulators; duties; prohibited acts.

(1) Each person who signs a petition shall, at the time of and in addition to signing, personally affix the date, print his or her last name and first name in full, and affix his or her date of birth and address, including the street and

number or a designation of a rural route or voting precinct and the city or village or a post office address. A person signing a petition may use his or her initials in place of his or her first name if such person is registered to vote under such initials. No signer shall use ditto marks as a means of personally affixing the date or address to any petition. A wife shall not use her husband's first name when she signs a petition but shall personally affix her first name and her last name by marriage or her surname. Any signature using ditto marks as a means of personally affixing the date or address of any petition or any signature using a spouse's first name instead of his or her own shall be invalid.

(2) Each circulator of a petition shall personally witness the signatures on the petition and shall sign the circulator's affidavit.

(3) No person shall:

- (a) Sign any name other than his or her own to any petition;
- (b) Knowingly sign his or her name more than once for the same petition effort or measure;
- (c) Sign a petition if he or she is not a registered voter and qualified to sign the same except as provided in section 32-1404;
- (d) Falsely swear to any signature upon any such petition;
- (e) Accept money or other thing of value for signing any petition; or
- (f) Offer money or other thing of value in exchange for a signature upon any petition.

Source: Laws 1994, LB 76, § 198; Laws 1997, LB 460, § 2; Laws 2003, LB 444, § 7; Laws 2008, LB39, § 3; Laws 2015, LB367, § 1.
Effective date August 30, 2015.

ARTICLE 7 POLITICAL PARTIES

Section

32-710. State conventions; when held; organization; platform; selection of presidential electors.

32-710 State conventions; when held; organization; platform; selection of presidential electors.

Each political party shall hold a state convention biennially on a date to be fixed by the state central committee but not later than September 1. Candidates for elective offices may be nominated at such conventions pursuant to section 32-627 or 32-721. Such nominations shall be certified to the Secretary of State by the chairperson and secretary of the convention. The certificates shall have the same force and effect as nominations in primary elections. A political party may not nominate a candidate at the convention for an office for which the party did not nominate a candidate at the primary election except as provided for new political parties in section 32-621. The convention shall formulate and promulgate a state platform, select a state central committee, select electors for President and Vice President of the United States, and transact the business which is properly before it. One presidential elector shall be chosen from each congressional district, and two presidential electors shall be chosen at large. The officers of the convention shall certify the names of the electors to the Governor and Secretary of State.

Source: Laws 1994, LB 76, § 210; Laws 1997, LB 764, § 70; Laws 2011, LB368, § 2; Laws 2015, LB575, § 18.
Operative date August 30, 2015.

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section

32-813. Statewide general election; ballot; contents.

32-813 Statewide general election; ballot; contents.

(1) The names of all candidates and all proposals to be voted upon at the general election shall be arranged upon the ballot in parts separated from each other by bold lines in the order the offices and proposals are set forth in this section. If any office is not subject to the upcoming election, the office shall be omitted from the ballot and the remaining offices shall move up so that the same relative order is preserved. The order of any offices may be altered to allow for the best utilization of ballot space in order to avoid printing a second ballot when one ballot would be sufficient if an optical-scan ballot is used. All proposals on the ballot submitted by a political subdivision shall follow all offices on the ballot submitted by a political subdivision.

(2)(a) If the election is in a year in which a President of the United States is to be elected, the names and spaces for voting for candidates for President and Vice President shall be entitled Presidential Ticket in boldface type.

(b) The names of candidates for President and Vice President for each political party shall be grouped together, and each group shall be enclosed with brackets with the political party name next to the brackets and one square or oval opposite the names in which the voter indicates his or her choice.

(c) The names of candidates for President and Vice President who have successfully petitioned on the ballot for the general election shall be grouped together with the candidates appearing on the same petition being grouped together, and each group shall be enclosed with brackets with the words "By Petition" next to the brackets and one square or oval opposite the names in which the voter indicates his or her choice.

(d) Beneath the names of the candidates for President and Vice President certified by the officers of the national political party conventions pursuant to section 32-712 and beneath the names of all candidates for President and Vice President placed on the general election ballot by petition, two write-in lines shall be provided in which the voter may fill in the names of the candidates of his or her choice. The lines shall be enclosed with brackets with one square or oval opposite the names in which the voter indicates his or her choice. The name appearing on the top line shall be considered to be the candidate for President, and the name appearing on the second line shall be considered to be the candidate for Vice President.

(3) The names and spaces for voting for candidates for United States Senator if any are to be elected shall be entitled United States Senatorial Ticket in boldface type.

(4) The names and spaces for voting for candidates for Representatives in Congress shall be entitled Congressional Ticket in boldface type. Above the candidates' names, the office shall be designated For Representative in Congress District.

(5) The names and spaces for voting for candidates for the various state officers shall be entitled State Ticket in boldface type. Each set of candidates shall be separated by lines across the column, and above each set of candidates

shall be designated the office for which they are candidates, arranged in the order prescribed by the Secretary of State. The candidates for Governor of each political party receiving the highest number of votes in the primary election shall be grouped together with their respective candidates for Lieutenant Governor. Each group shall be enclosed with brackets with the political party name next to the brackets and one square or oval opposite the names in which the voter indicates his or her choice for Governor and Lieutenant Governor jointly. The candidates for Governor and Lieutenant Governor who have successfully petitioned on the general election ballot shall be grouped together with the candidates appearing on the same petition being grouped together. Each group shall be enclosed with brackets with the words "By Petition" next to the brackets and one square or oval opposite the names in which the voter indicates his or her choice for Governor and Lieutenant Governor jointly. Beneath the names of the candidates for Governor nominated at a primary election by political party and their respective candidates for Lieutenant Governor and beneath the names of all candidates for Governor and Lieutenant Governor placed on the general election ballot by petition, one write-in line shall be provided in which the registered voter may fill in the name of the candidate for Governor of his or her choice and one square or oval opposite the line in which the voter indicates his or her choice for Governor.

(6) The names and spaces for voting for nonpartisan candidates shall be entitled Nonpartisan Ticket in boldface type. The names of all nonpartisan candidates shall appear in the order listed in this subsection, except that when using an optical-scan ballot, the order of offices may be altered to allow for the best utilization of ballot space to avoid printing a second ballot when one ballot would be sufficient:

- (a) Legislature;
- (b) State Board of Education;
- (c) Board of Regents of the University of Nebraska;
- (d) Chief Justice of the Supreme Court;
- (e) Judge of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Judge of the Nebraska Workers' Compensation Court;
- (h) Judge of the District Court;
- (i) Judge of the Separate Juvenile Court;
- (j) Judge of the County Court; and

(k) County officers in the order prescribed by the election commissioner or county clerk.

(7) The names and spaces for voting for the various county offices and for measures submitted to the county vote only or in only a part of the county shall be entitled County Ticket in boldface type. If the election commissioner or county clerk deems it advisable, the measures may be submitted on a separate ballot if using a paper ballot or on either side of an optical-scan ballot if the ballot is placed in a ballot envelope or sleeve before being deposited in a ballot box.

(8) The candidates for office in the precinct only or in the city or village only shall be printed on the ballot, except that if the election commissioner or county clerk deems it advisable, candidates for these offices may be submitted on a

separate ballot if using a paper ballot or on either side of an optical-scan ballot if the ballot is placed in a ballot envelope or sleeve before being deposited in a ballot box.

(9) All proposals submitted by initiative or referendum and proposals for constitutional amendments shall be placed on a separate ballot when a paper ballot is used which requires that the ballot after being voted be folded before being deposited in a ballot box. When an optical-scan ballot is used which requires a ballot envelope or sleeve in which the ballot after being voted is placed before being deposited in a ballot box, initiative or referendum proposals and proposals for constitutional amendments may be placed on either side of the ballot, shall be separated by a bold line, and shall follow all other offices placed on the same side of the ballot. Initiative or referendum proposals and constitutional amendments so arranged shall constitute a separate ballot. Proposals for constitutional amendments proposed by the Legislature shall be placed on the ballot as provided in sections 49-201 to 49-211.

Source: Laws 1994, LB 76, § 234; Laws 1999, LB 571, § 5; Laws 2001, LB 252, § 1; Laws 2001, LB 768, § 5; Laws 2003, LB 358, § 13; Laws 2015, LB575, § 19.

Operative date August 30, 2015.

ARTICLE 9

VOTING AND ELECTION PROCEDURES

Section

- 32-941. Early voting; written request for ballot; procedure.
 32-942. Registered voter anticipating absence on election day; right to vote; method; voter present in county; voting place; person registering to vote and requesting a ballot at same time; treatment of ballot.
 32-947. Ballot to vote early; delivery; procedure; identification envelope; instructions.
 32-952. Special election by mail; when.
 32-953. Special election by mail; mailing of ballots; procedure.

32-941 Early voting; written request for ballot; procedure.

Any registered voter permitted to vote early pursuant to section 32-938 may, not more than one hundred twenty days before any election and not later than 4 p.m. on the Wednesday preceding the election, request a ballot for the election to be mailed to a specific address. A registered voter shall request a ballot in writing to the election commissioner or county clerk in the county where the registered voter has established his or her home and shall indicate his or her residence address, the address to which the ballot is to be mailed if different, and his or her telephone number if available. The registered voter may use the form published by the election commissioner or county clerk pursuant to section 32-808. The registered voter shall sign the request. A registered voter may use a facsimile machine or electronic mail for the submission of a request for a ballot. The election commissioner or county clerk shall include a registration application with the ballots if the person is not registered. Registration applications shall not be mailed after the third Friday preceding the election. If the person is not registered to vote, the registration application shall be returned not later than the closing of the polls on the day of

the election. No ballot issued under this section shall be counted unless such registration application is properly completed and processed.

Source: Laws 1994, LB 76, § 284; Laws 1997, LB 764, § 93; Laws 2002, LB 935, § 9; Laws 2005, LB 98, § 13; Laws 2005, LB 566, § 43; Laws 2011, LB499, § 5; Laws 2015, LB575, § 20.
Operative date August 30, 2015.

32-942 Registered voter anticipating absence on election day; right to vote; method; voter present in county; voting place; person registering to vote and requesting a ballot at same time; treatment of ballot.

(1) Except as otherwise provided in subsection (2) of this section, a registered voter of this state who anticipates being absent from the county of his or her residence on the day of any election may appear in person before the election commissioner or county clerk not more than thirty days prior to the day of election and obtain his or her ballot. The registered voter shall vote the ballot in the office of the election commissioner or county clerk or shall return the ballot to the office not later than the closing of the polls on the day of the election. A registered voter who is present in the county on the day of the election and who chooses to vote on the day of the election shall vote at the polling place assigned to the precinct in which he or she resides unless he or she is returning a ballot for early voting or voting pursuant to section 32-943.

(2) If a person registers to vote and requests a ballot at the same time under this section, he or she shall (a)(i) present one of the address confirmation documents as prescribed in subdivision (1)(a) of section 32-318.01, (ii) present proof that he or she is a member of the armed forces of the United States who by reason of active duty has been absent from his or her place of residence where the member is otherwise eligible to vote, is a member of the United States Merchant Marine who by reason of service has been away from his or her place of residence where the member is otherwise eligible to vote, is a spouse or dependent of a member of the armed forces of the United States or United States Merchant Marine who has been absent from his or her place of residence due to the service of that member, or resides outside the United States and but for such residence would be qualified to vote in the state if the state was the last place in which the person was domiciled before leaving the United States, or (iii) state that he or she is elderly or handicapped and has requested to vote by alternative means other than by casting a ballot at his or her polling place on election day or (b) vote a ballot which is placed in an envelope with the voter's name and address and other necessary identifying information and kept securely for counting as provided in this subsection. This subsection does not extend the deadline for voter registration specified in section 32-302. A ballot cast pursuant to subdivision (b) of this subsection shall be rejected and shall not be counted if the acknowledgment of registration sent to the registrant pursuant to section 32-322 is returned as undeliverable for a reason other than clerical error within ten days after it is mailed, otherwise after such ten-day period, the ballot shall be counted.

(3) This section applies only to a person who appears in person to obtain a ballot as provided in subsection (1) of this section and does not apply to a ballot mailed to a voter pursuant to section 32-945.

Source: Laws 1994, LB 76, § 285; Laws 2002, LB 935, § 10; Laws 2005, LB 98, § 14; Laws 2005, LB 566, § 44; Laws 2011, LB499, § 6;

Laws 2013, LB271, § 3; Laws 2014, LB565, § 1; Laws 2015, LB575, § 21.
Operative date August 30, 2015.

32-947 Ballot to vote early; delivery; procedure; identification envelope; instructions.

(1) Upon receipt of an application or other request for a ballot to vote early, the election commissioner or county clerk shall determine whether the applicant is a registered voter and is entitled to vote as requested. If the election commissioner or county clerk determines that the applicant is a registered voter entitled to vote early and the application was received at or before 4 p.m. on the Wednesday preceding the election, the election commissioner or county clerk shall deliver a ballot to the applicant in person or by mail, postage paid. The election commissioner or county clerk or any employee of the election commissioner or county clerk shall write or cause to be affixed his or her customary signature or initials on the ballot.

(2) An unsealed identification envelope shall be delivered with the ballot, and upon the back of the envelope shall be printed a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the enclosed ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (a) I,, am a registered voter in County;
- (b) I reside in the State of Nebraska at
- (c) I have voted the enclosed ballot and am returning it in compliance with Nebraska law; and
- (d) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature

(3) If the ballot and identification envelope will be returned by mail or by someone other than the voter, the election commissioner or county clerk shall include with the ballot an identification envelope upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk.

(4) The election commissioner or county clerk shall also enclose with the ballot materials:

- (a) A registration application, if the election commissioner or county clerk has determined that the applicant is not a registered voter pursuant to section 32-945, with instructions that failure to return the completed and signed

application indicating the residence address as it appears on the voter's request for a ballot to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted;

(b) A registration application and the oath pursuant to section 32-946, if the voter is without a residence address, with instructions that the residence address of the voter shall be deemed that of the office of the election commissioner or county clerk of the county of the voter's prior residence and that failure to return the completed and signed application and oath to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted; or

(c) Written instructions directing the voter to submit a copy of an identification document pursuant to section 32-318.01 if the voter is required to present identification under such section and advising the voter that failure to submit identification to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted.

(5) The election commissioner or county clerk may enclose with the ballot materials a separate return envelope for the voter's use in returning his or her identification envelope containing the voted ballot, registration application, and other materials that may be required.

Source: Laws 1994, LB 76, § 290; Laws 1995, LB 514, § 5; Laws 1999, LB 571, § 8; Laws 1999, LB 802, § 16; Laws 2002, LB 1054, § 22; Laws 2003, LB 359, § 7; Laws 2005, LB 98, § 19; Laws 2005, LB 566, § 48; Laws 2008, LB838, § 2; Laws 2011, LB449, § 9; Laws 2015, LB575, § 22.
Operative date August 30, 2015.

Cross References

Forgery or false placement of initials or signatures on ballot pursuant to section, penalty, see section 32-1516.

32-952 Special election by mail; when.

If a political subdivision decides to place a candidate or an issue on the ballot at a special election, the election commissioner or county clerk may conduct the special election by mail as provided in section 32-953 or conduct the special election as otherwise authorized in the Election Act. In making a determination as to whether to conduct the election by mail, the election commissioner or county clerk shall consider whether all of the following conditions are met:

(1) All registered voters of the political subdivision or a district or ward of the political subdivision are eligible to vote on all candidates and issues submitted to the voters;

(2) Only registered voters of the political subdivision or the district or ward of the political subdivision are eligible to vote on all candidates and issues submitted to the voters;

(3) A review has been conducted of the costs and the expected voter turnout which may result from holding the election by mail;

(4) The election commissioner or county clerk has determined a date for the election which is not the same date as another election in which the registered voters of the political subdivision are eligible to vote; and

(5) The Secretary of State has approved a written plan for the conduct of the election, including a written timetable for the conduct of the election, submitted by the election commissioner or county clerk. The written plan shall include

provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting.

Source: Laws 1996, LB 964, § 5; Laws 2005, LB 98, § 24; Laws 2015, LB575, § 23.

Operative date August 30, 2015.

32-953 Special election by mail; mailing of ballots; procedure.

(1) Except as otherwise provided in subsection (2) of this section, the election commissioner or county clerk shall mail the official ballot to all registered voters of the political subdivision or the district or ward of the political subdivision at the addresses appearing on the voter registration register on the same day. The ballots shall be mailed by nonforwardable first-class mail not sooner than the twentieth day before the date set for the election and not later than the tenth day before the date set for the election. The election commissioner or county clerk shall include with the ballot an unsealed identification envelope meeting the requirements of subsection (2) of section 32-947 and instructions sufficient to describe the voting process.

(2) The election commissioner or county clerk may choose not to mail a ballot to all registered voters who have been sent a notice pursuant to section 32-329 and failed to respond to the notice. If the election commissioner or county clerk chooses not to mail a ballot to such voters, he or she shall mail a notice to all such registered voters explaining how to obtain a ballot and stating the applicable deadlines.

Source: Laws 1996, LB 964, § 6; Laws 2008, LB838, § 3; Laws 2014, LB946, § 17; Laws 2015, LB575, § 24.

Operative date August 30, 2015.

ARTICLE 10

COUNTING AND CANVASSING BALLOTS

Section

32-1032. County canvassing board; election materials; preservation; duration.

32-1037. Board of state canvassers; members; duties.

32-1032 County canvassing board; election materials; preservation; duration.

Upon the completion of the canvass by the county canvassing board, all books shall again be sealed, and the election commissioner or county clerk shall keep all election materials, including the ballots-cast containers from each precinct, the sealed envelopes containing the precinct list of registered voters, the precinct sign-in register, the official summary or summaries of votes cast, and the container for early voting materials, for not less than twenty-two months when statewide primary, general, or special elections involve federal offices, candidates, and issues and not less than fifty days for local elections not held in conjunction with a statewide primary, general, or special election. The election commissioner or county clerk shall keep on file one copy of each ballot face used in each precinct of the official partisan, nonpartisan, constitutional amendment, and initiative and referendum ballots, as used for voting, and all election notices used at each primary and general election for twenty-two months. The precinct sign-in register, the record of early voters, and the official

summary of votes cast shall be subject to the inspection of any person who may wish to examine the same after the primary, general, or special election. The election commissioner or county clerk shall not allow any other election materials to be inspected, including ballots and provisional ballot envelopes, except when an election is contested or the materials become necessary to be used in evidence in the courts. The election commissioner or county clerk shall direct the destruction of such materials after such time, except that the election commissioner or county clerk may retain materials for the purposes of establishing voter histories.

Source: Laws 1994, LB 76, § 326; Laws 1997, LB 764, § 100; Laws 2005, LB 98, § 29; Laws 2015, LB575, § 25.
Operative date August 30, 2015.

32-1037 Board of state canvassers; members; duties.

There shall be a board of state canvassers consisting of the Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, and Attorney General. The board of state canvassers shall meet at the office of the Secretary of State or such other location within the State Capitol as designated by the Secretary of State on the fourth Monday after each statewide primary and general election for the sole purpose of canvassing the votes cast for all officers and issues certified to the election commissioner or county clerk by the Secretary of State. The board of state canvassers may adjourn from day to day until all returns are received and all votes are tabulated. The Governor on the advice of the Secretary of State or the Attorney General may call an extraordinary session of the board of state canvassers. The duty of the board of state canvassers to canvass the votes is ministerial in nature.

Source: Laws 1994, LB 76, § 331; Laws 1999, LB 60, § 1; Laws 2015, LB575, § 26.
Operative date August 30, 2015.

**ARTICLE 12
ELECTION COSTS**

Section
32-1203. Political subdivisions; election expenses; duties; determination of charge.

32-1203 Political subdivisions; election expenses; duties; determination of charge.

(1) Each city, village, school district, public power district, sanitary and improvement district, metropolitan utilities district, fire district, natural resources district, community college area, learning community coordinating council, educational service unit, hospital district, reclamation district, and library board shall pay for the costs of nominating and electing its officers as provided in subsection (2), (3), or (4) of this section. If a special issue is placed on the ballot at the time of the statewide primary or general election by any political subdivision, the political subdivision shall pay for the costs of the election as provided in subsection (2), (3), or (4) of this section. The districts listed in this subsection shall furnish to the Secretary of State and election commissioner or county clerk any maps and additional information which the election commissioner or county clerk may require in the proper performance of their duties in the conduct of elections and certification of results.

(2) The charge for each primary and general election shall be determined by (a) ascertaining the total cost of all chargeable costs as described in section 32-1202, (b) dividing the total cost by the number of precincts participating in the election to fix the cost per precinct, (c) prorating the cost per precinct by the inked ballot inch in each precinct for each political subdivision, and (d) totaling the cost for each precinct for each political subdivision, except that the minimum charge for each primary and general election for each political subdivision shall be one hundred dollars.

(3) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may charge public power districts the fee for election costs set by section 70-610.

(4) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may bill school districts directly for the costs of an election held under section 10-703.01.

Source: Laws 1994, LB 76, § 368; Laws 1997, LB 764, § 104; Laws 2008, LB1067, § 1; Laws 2011, LB449, § 11; Laws 2015, LB575, § 27.
Operative date August 30, 2015.

ARTICLE 13

RECALL

Section

32-1308. Recall election; results; effect; vacancies; how filled.

32-1308 Recall election; results; effect; vacancies; how filled.

(1) If a majority of the votes cast at a recall election are against the removal of the official named on the ballot or the election results in a tie, the official shall continue in office for the remainder of his or her term but may be subject to further recall attempts as provided in section 32-1309.

(2) If a majority of the votes cast at a recall election are for the removal of the official named on the ballot, he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the official is deemed removed, the removal shall result in a vacancy in the office which shall be filled as provided in this section and sections 32-567 to 32-570 and 32-574.

(3) If the election results show a margin of votes equal to one percent or less between the removal or retention of the official in question, the Secretary of State, election commissioner, or county clerk shall order a recount of the votes cast unless the official named on the ballot files a written statement with the filing clerk that he or she does not want a recount.

(4) If there are vacancies in the offices of one-half or more of the members of any governing body at one time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the Secretary of State, election commissioner, or county clerk.

(5) No official who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his or her removal or the removal of any other member of the same governing body during the remainder of his or her term of office.

Source: Laws 1994, LB 76, § 381; Laws 2015, LB575, § 28.
Operative date August 30, 2015.

ARTICLE 14

INITIATIVES, REFERENDUMS, AND ADVISORY VOTES

Section

32-1404. Initiative and referendum petitions; signers and circulators; requirements.

32-1404 Initiative and referendum petitions; signers and circulators; requirements.

A signer of an initiative and referendum petition shall be a registered voter of the State of Nebraska on or before the date on which the petition is required to be filed with the Secretary of State and shall meet the requirements of section 32-630. A person who circulates initiative and referendum petitions shall comply with the requirements of section 32-629 and subsection (2) of section 32-630 and with the prohibitions contained in subdivisions (3)(a), (d), and (f) of section 32-630.

Source: Laws 1994, LB 76, § 386; Laws 1995, LB 337, § 4; Laws 1997, LB 460, § 7; Laws 2003, LB 444, § 12; Laws 2008, LB39, § 5; Laws 2015, LB367, § 2.
Effective date August 30, 2015.



CHAPTER 33

FEES AND SALARIES

Section

- 33-110. County clerks; fees for certificate and seal; when charged; marriage licenses and records; fees.
- 33-123. County court; civil matters; fees.
- 33-124. County court; criminal cases; fee.
- 33-125. County court; probate fees; how determined.

33-110 County clerks; fees for certificate and seal; when charged; marriage licenses and records; fees.

County clerks shall receive no fee for the performance of the following services: For issuing certificates of election; for performing the duties of clerk of the county board; for taking acknowledgments of claims against the county; for attesting or certifying any document authorized by the county board or required by the departments of the state; or for recording Army or Navy discharges or furnishing certified copies thereof to be used in connection with any claim for compensation or disability. A charge of twenty-five cents shall be made for any other certificate and seal unless otherwise provided. The fees collected shall be credited to the county general fund.

County clerks shall receive a fee of twenty-five dollars for the entire proceedings of issuing a marriage license, administering the related oaths or affirmations, and recording a marriage certificate. An additional fee of nine dollars shall be made for each certified copy of a marriage record on file in the office of the county clerk. Both such fees shall be deposited in the county general fund.

Source: R.S.1866, c. 19, § 14, p. 167; R.S.1913, § 2434; C.S.1922, § 2374; C.S.1929, § 33-113; Laws 1931, c. 68, § 1, p. 187; C.S.Supp.,1941, § 33-113; R.S.1943, § 33-110; Laws 1949, c. 93, § 6, p. 247; Laws 1953, c. 116, § 1, p. 371; Laws 1986, LB 525, § 2; Laws 1988, LB 1126, § 1; Laws 1995, LB 202, § 1; Laws 2015, LB88, § 1.

Effective date August 30, 2015.

33-123 County court; civil matters; fees.

The county court shall be entitled to the following fees in civil matters:

- (1) For any and all services rendered up to and including the judgment or dismissal of the action other than for a domestic relations matter, twenty dollars of which two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2015. Beginning July 1, 2015, through June 30, 2017, four dollars of the twenty dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges. Beginning July 1, 2017, six dollars of the twenty dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges;

(2) For any and all services rendered up to and including the judgment or dismissal of a domestic relations matter, forty dollars;

(3) For filing a foreign judgment or a judgment transferred from another court in this state, fifteen dollars; and

(4) For writs of execution, writs of restitution, garnishment, and examination in aid of execution, five dollars each.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 458; Laws 1907, c. 56, § 1, p. 229; Laws 1909, c. 58, § 1, p. 286; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 110; Laws 1917, c. 45, § 1, p. 125; Laws 1921, c. 95, § 1, p. 357; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 284; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 171; Laws 1937, c. 86, § 1, p. 283; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-123; Laws 1945, c. 74, § 1, p. 276; Laws 1972, LB 1032, § 220; Laws 1974, LB 739, § 2; Laws 1981, LB 99, § 2; Laws 1982, LB 928, § 29; Laws 1983, LB 617, § 6; Laws 1989, LB 233, § 2; Laws 1995, LB 270, § 2; Laws 1996, LB 1296, § 7; Laws 2005, LB 348, § 10; Laws 2015, LB468, § 7.
Effective date May 30, 2015.

33-124 County court; criminal cases; fee.

In criminal matters, including preliminary and juvenile hearings, the county court shall receive, for any and all services rendered up to and including the judgment or dismissal of the action and the issuance of mittimus or discharge to the jailer, the sum of twenty dollars of which two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2015. Beginning July 1, 2015, through June 30, 2017, four dollars of the twenty dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges. Beginning July 1, 2017, six dollars of the twenty dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

Source: Laws 1915, c. 39, § 1, p. 110; Laws 1917, c. 45, § 1, p. 126; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 285; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 172; Laws 1937, c. 86, § 1, p. 284; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-124; Laws 1945, c. 74, § 2, p. 276; Laws 1972, LB 1032, § 221; Laws 1981, LB 99, § 3; Laws 1982, LB 928, § 30; Laws 1983, LB 617, § 7; Laws 1989, LB 233, § 3; Laws 2005, LB 348, § 11; Laws 2015, LB468, § 8.
Effective date May 30, 2015.

33-125 County court; probate fees; how determined.

(1) In probate matters the county court shall be entitled to receive the following fees:

(a)(i) For probate proceedings commenced and closed informally, twenty-two dollars of which two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges; for each petition or application filed within the informal proceedings, twenty-two dollars of which two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2015. Beginning July 1, 2015, through June 30, 2017, four dollars of the twenty-two dollars shall be remitted to the State

Treasurer for credit to the Nebraska Retirement Fund for Judges. Beginning July 1, 2017, six dollars of the twenty-two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges; and

(ii) For any other proceeding under the Nebraska Probate Code for which no court fee is established by statute, twenty-two dollars of which two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2015. Beginning July 1, 2015, through June 30, 2017, four dollars of the twenty-two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges. Beginning July 1, 2017, six dollars of the twenty-two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges. The fees assessed under this subdivision (a) shall not exceed the fees which would be assessed for a formal probate under subdivision (b) of this subsection; and

(b) For probate proceedings commenced or closed formally:

(i) When the value does not exceed one thousand dollars, twenty-two dollars;

(ii) When the value exceeds one thousand dollars and is not more than two thousand dollars, thirty dollars;

(iii) When the value exceeds two thousand dollars and is not more than five thousand dollars, fifty dollars;

(iv) When the value exceeds five thousand dollars and is not more than ten thousand dollars, seventy dollars;

(v) When the value exceeds ten thousand dollars and is not more than twenty-five thousand dollars, eighty dollars;

(vi) When the value exceeds twenty-five thousand dollars and is not more than fifty thousand dollars, one hundred dollars;

(vii) When the value exceeds fifty thousand dollars and is not more than seventy-five thousand dollars, one hundred twenty dollars;

(viii) When the value exceeds seventy-five thousand dollars and is not more than one hundred thousand dollars, one hundred sixty dollars;

(ix) When the value exceeds one hundred thousand dollars and is not more than one hundred twenty-five thousand dollars, two hundred twenty dollars;

(x) When the value exceeds one hundred twenty-five thousand dollars and is not more than one hundred fifty thousand dollars, two hundred fifty dollars;

(xi) When the value exceeds one hundred fifty thousand dollars and is not more than one hundred seventy-five thousand dollars, two hundred seventy dollars;

(xii) When the value exceeds one hundred seventy-five thousand dollars and is not more than two hundred thousand dollars, three hundred dollars;

(xiii) When the value exceeds two hundred thousand dollars and is not more than three hundred thousand dollars, three hundred fifty dollars;

(xiv) When the value exceeds three hundred thousand dollars and is not more than four hundred thousand dollars, four hundred dollars;

(xv) When the value exceeds four hundred thousand dollars and is not more than five hundred thousand dollars, five hundred dollars;

(xvi) When the value exceeds five hundred thousand dollars and is not more than seven hundred fifty thousand dollars, six hundred dollars;

(xvii) When the value exceeds seven hundred fifty thousand dollars and is not more than one million dollars, seven hundred dollars;

(xviii) When the value exceeds one million dollars and is not more than two million five hundred thousand dollars, eight hundred dollars;

(xix) When the value exceeds two million five hundred thousand dollars and is not more than five million dollars, one thousand dollars; and

(xx) On all estates when the value exceeds five million dollars, one thousand five hundred dollars.

(2) The fees prescribed in subdivision (1)(b) of this section shall be based on the gross value of the estate, including both real and personal property in the State of Nebraska at the time of death. The gross value shall mean the actual value of the estate less liens and joint tenancy property. Formal fees shall be charged in full for all services performed by the court, and no additional fees shall be charged for petitions, hearing, and orders in the course of such administration. The court shall provide one certified copy of letters of appointment without charge. In other cases when it is necessary to copy instruments, the county court shall be allowed the fees provided in section 33-126.05. In all cases when a petition for probate of will or appointment of an administrator, special administrator, personal representative, guardian, or trustee or any other petition for an order in probate matters is filed and no appointment is made or order entered and the cause is dismissed, the fee shall be ten dollars.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 459; Laws 1907, c. 56, § 1, p. 230; Laws 1909, c. 58, § 1, p. 287; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 126; Laws 1921, c. 95, § 1, p. 358; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 285; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 172; Laws 1937, c. 86, § 1, p. 284; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-125; Laws 1945, c. 74, § 3, p. 277; Laws 1963, c. 187, § 1, p. 629; Laws 1975, LB 481, § 22; Laws 1982, LB 928, § 31; Laws 1983, LB 2, § 1; Laws 1984, LB 373, § 2; Laws 1984, LB 492, § 1; Laws 1989, LB 233, § 4; Laws 2005, LB 348, § 12; Laws 2015, LB468, § 9.
Effective date May 30, 2015.

Cross References

Nebraska Probate Code, see section 30-2201.

**CHAPTER 35
FIRE COMPANIES AND FIREFIGHTERS**

Article.

- 5. Rural and Suburban Fire Protection Districts. 35-508 to 35-517.

ARTICLE 5

RURAL AND SUBURBAN FIRE PROTECTION DISTRICTS

Section

- 35-508. District; directors; powers.
- 35-509. District; budget; tax to support; limitation; how levied; county treasurer; duties.
- 35-514.02. Emergency medical or fire protection service; contract; agreement; notice; hearing; cost; levy; limitation.
- 35-517. District; boundaries; county board; duties.

35-508 District; directors; powers.

The board of directors shall have the following general powers:

- (1) To determine a general fire protection and rescue program for the district;
- (2) To make an annual estimate of the probable expense for carrying out such program;
- (3) To annually certify such estimate to the county clerk in the manner provided by section 35-509;
- (4) To manage and conduct the business affairs of the district;
- (5) To make and execute contracts in the name of and on behalf of the district;
- (6) To buy real estate when needed for the district and to sell real estate of the district when the district has no further use for it;
- (7) To purchase or lease such firefighting and rescue equipment, supplies, and other real or personal property as necessary and proper to carry out the general fire protection and rescue program of the district;
- (8) To incur indebtedness on behalf of the district;
- (9) To authorize the issuance of evidences of the indebtedness permitted under subdivision (8) of this section and to pledge any real or personal property owned or acquired by the district as security for the same;
- (10) To organize, establish, equip, maintain, and supervise a paid, volunteer, or combination paid and volunteer fire department or company to serve the district and to establish a service award benefit program pursuant to the Volunteer Emergency Responders Recruitment and Retention Act;
- (11) To employ and compensate such personnel as necessary to carry out the general fire protection and rescue program of the district;
- (12) To authorize the execution of a contract with the Game and Parks Commission or a public power district for fire protection of property of the

commission or public power district located in or adjacent to the rural or suburban fire protection district;

(13)(a) If the rural or suburban fire protection district has levy authority pursuant to subsection (10) of section 77-3442, to levy a tax not to exceed ten and one-half cents on each one hundred dollars in any one year upon the taxable value of all taxable property within such district for the purpose of establishing a sinking fund, which shall be in addition to the amount of tax which may be annually levied to defray the general and incidental expenses of such district. The sinking fund shall be for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of district buildings to house equipment or personal belongings of a fire department, for the purchase of firefighting and rescue equipment or apparatus, for the acquisition of any land incidental to such purposes, or for payment of principal and interest on any evidence of indebtedness issued pursuant to subdivisions (8) and (9) of this section. The levy authorized in this subdivision shall be subject to subsection (10) of section 77-3442; and

(b) If the rural or suburban fire protection district does not have levy authority pursuant to subsection (10) of section 77-3442, to levy a tax not to exceed ten and one-half cents on each one hundred dollars in any one year upon the taxable value of all taxable property within such district, subject to section 77-3443, for the purpose of establishing a sinking fund, which shall be in addition to the amount of tax which may be annually levied to defray the general and incidental expenses of such district. The sinking fund shall be for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of district buildings to house equipment or personal belongings of a fire department, for the purchase of firefighting and rescue equipment or apparatus, for the acquisition of any land incidental to such purposes, or for payment of principal and interest on any evidence of indebtedness issued pursuant to subdivisions (8) and (9) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy;

(14) To adopt and enforce fire codes and establish penalties at annual meetings, except that the code must be available prior to annual meetings and notice shall so provide; and

(15) Generally to perform all acts necessary to fully carry out the purposes of sections 35-501 to 35-517.

Source: Laws 1949, c. 98, § 8, p. 265; Laws 1953, c. 120, § 1, p. 378; Laws 1967, c. 209, § 1, p. 568; Laws 1967, c. 210, § 1, p. 570; Laws 1971, LB 583, § 2; Laws 1971, LB 691, § 1; Laws 1972, LB 849, § 2; Laws 1975, LB 375, § 1; Laws 1979, LB 187, § 149; Laws 1985, LB 308, 1; Laws 1986, LB 831, § 1; Laws 1990, LB 918, § 2; Laws 1992, LB 719A, § 130; Laws 1996, LB 1114, § 54; Laws 1998, LB 1120, § 11; Laws 1999, LB 849, § 31; Laws 2015, LB325, § 3.

Operative date July 1, 2016.

Cross References

Volunteer Emergency Responders Recruitment and Retention Act, see section 35-1301.

35-509 District; budget; tax to support; limitation; how levied; county treasurer; duties.

(1) The board of directors shall have the power and duty to determine a general fire protection and rescue policy for the district and shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary in carrying out such contemplated program for the ensuing fiscal year, including the amount of principal and interest upon the indebtedness of the district for the ensuing year.

(2)(a) For any rural or suburban fire protection district that has levy authority pursuant to subsection (10) of section 77-3442, after the adoption of the budget statement, the president and secretary of the district shall certify the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county clerk or county clerks on or before August 1 of each year. The county board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district for the maintenance of the fire protection district for the fiscal year, plus such levy as is authorized to be made under subdivision (13)(a) of section 35-508, all such levies being subject to subsection (10) of section 77-3442. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (3) of this section.

(b) For any rural or suburban fire protection district that does not have levy authority pursuant to subsection (10) of section 77-3442, after the adoption of the budget statement, the president and secretary of the district shall certify the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county clerk or county clerks on or before August 1 of each year. The county board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district for the maintenance of the fire protection district for the fiscal year, plus such levy as is authorized to be made under subdivision (13)(b) of section 35-508, all such levies being subject to section 77-3443. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (3) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy.

(3) All such taxes collected or received for the district by the treasurer of any other county than the one in which the greatest portion of the valuation of the district is located shall be remitted to the treasurer of the county in which the greatest portion of the valuation of the district is located at least quarterly. All such taxes collected or received shall be placed to the credit of such district in the treasury of the county in which the greatest portion of the valuation of the district is located.

(4) In no case shall the amount of tax levy exceed the amount of funds to be received from taxation according to the adopted budget statement of the district.

Source: Laws 1939, c. 38, § 5, p. 193; C.S.Supp.,1941, § 35-605; R.S. 1943, § 35-405; Laws 1947, c. 128, § 1, p. 368; Laws 1949, c. 98, § 9, p. 266; Laws 1953, c. 121, § 1, p. 383; Laws 1953, c. 287, § 54, p. 962; Laws 1955, c. 127, § 1, p. 360; Laws 1955, c. 128, § 4, p. 365; Laws 1969, c. 145, § 34, p. 693; Laws 1972, LB 849, § 3; Laws 1975, LB 375, § 2; Laws 1979, LB 187, § 150; Laws 1990, LB 918, § 3; Laws 1992, LB 719A, § 131; Laws 1996, LB 1114, § 55; Laws 1998, LB 1120, § 12; Laws 2007, LB334, § 5; Laws 2015, LB325, § 4.
Operative date July 1, 2016.

35-514.02 Emergency medical or fire protection service; contract; agreement; notice; hearing; cost; levy; limitation.

(1) A rural or suburban fire protection district may establish an emergency medical service, including the provision of scheduled or unscheduled ambulance service, or provide fire protection service either within or without the district, may enter into agreements under the Interlocal Cooperation Act and the Joint Public Agency Act for the purpose of establishing an emergency medical service or providing fire protection service, may contract with any city, person, firm, corporation, or other fire protection district to provide such services, may expend funds of the district, and may charge a reasonable fee to the user. Before any such services are established under the authority of this section, the rural or suburban fire protection district shall hold a public hearing after giving at least ten days' notice, which notice shall include a brief summary of the general plan for establishing the emergency medical service or providing fire protection service, including an estimate of the initial cost and the possible continuing cost of operating the emergency medical service or fire protection service. If the board after such hearing determines that an emergency medical service or fire protection service is needed, it may proceed as authorized in this section. The authority granted in this section shall be cumulative and supplementary to any existing powers heretofore granted.

(2) Any fire protection district providing any service under this section may pay the cost for the service out of available funds or may levy a tax for the purpose of supporting an emergency medical service or providing fire protection service, which levy shall be in addition to any other tax for such fire protection district and shall be subject to (a) subsection (10) of section 77-3442 if the fire protection district has levy authority pursuant to subsection (10) of section 77-3442 or (b) section 77-3443 if the fire protection district does not have levy authority pursuant to subsection (10) of section 77-3442.

(3) When a fire protection district levies a tax for the purpose of supporting an emergency medical service, the taxpayers of such district shall be exempt from any tax levied under section 13-303.

(4) The board of a fire protection district which provides fire protection service outside of the district may charge a political subdivision with which the

district has entered into an agreement for such service on a per-call basis for such service.

Source: Laws 1967, c. 205, § 2, p. 562; Laws 1978, LB 560, § 3; Laws 1988, LB 1159, § 1; Laws 1996, LB 1114, § 56; Laws 1997, LB 138, § 37; Laws 1999, LB 87, § 69; Laws 2001, LB 808, § 4; Laws 2015, LB325, § 5.
Operative date July 1, 2016.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Other provisions regarding contracts for fire protection, see sections 13-303, 13-318, 18-1707, and 18-1709.

35-517 District; boundaries; county board; duties.

(1) The county board shall set the boundaries of all rural or suburban fire protection districts in the county so that all areas within the county which are not within the incorporated areas of cities and villages are included within a rural or suburban fire protection district.

(2) By July 1 of the year following the dissolution of any rural or suburban fire protection district, the county board shall set the boundaries of all remaining rural and suburban fire protection districts so that all areas within the county which are not within the incorporated areas of cities and villages are included within a rural or suburban fire protection district.

(3) Any county may set the boundaries of all rural and suburban fire protection districts which have the greatest portion of their valuation in such county so that the highest levy of a rural or suburban fire protection district is no more than two times the average levy of all rural and suburban fire protection districts which have the greatest portion of their valuation in such county based on the property tax request or levy and associated valuation for the current fiscal year. For purposes of this subsection, each county shall examine the property tax request or levy of each rural or suburban fire protection district in the county for all purposes except bonded indebtedness for the current fiscal year and lease-purchase contracts in existence on July 1, 1998, as compared to the valuation for the tax year against which the levy was imposed. If one or more fire protection districts do not meet the standard required by this subsection for the current year, boundaries may be relocated to place more valuation in the high levy districts and less in the low levy districts so that the standard is met. If any district is to be eliminated by the county to meet the standard, the property tax request or levy for the current fiscal year will be assumed to be transferred to the other districts which are to be in the territory of the eliminated district in proportion to the valuation transferred to such districts for purposes of compliance with the standard, the district shall be deemed to be dissolved, and the obligations and assets of the district shall be disposed of as provided in section 35-521. For purposes of this subsection, the average levy of all rural and suburban fire protection districts means the total taxes levied by all rural and suburban fire protection districts in a county which have the greatest portion of their valuation in such county divided by the total taxable valuation of all such districts.

(4) Before May 1 of the year in which any change in boundaries allowed or required under this section is to be effective, the county board shall forthwith designate a time and place for a hearing before the county board of such county

and shall give due notice thereof in the manner prescribed by section 35-514. The hearing shall be prior to June 1. At the time and place so fixed the county board shall meet and all persons interested shall have opportunity to be heard. Thereupon, the county board shall consider the general rural fire protection policy for the county as a whole and shall determine the boundaries of the district or districts, whether as existing prior to such determination or otherwise, and shall make a written order of such determination which shall be filed in the office of the county clerk by July 1 of the year in which any change in boundaries under this section is to be effective. If all rural and suburban fire protection districts in a county which have the greatest portion of their valuation in such county agree to a change in boundaries and submit a proposal to change boundaries to the county board prior to the hearing, the county shall adopt the proposal unless it finds that the proposal is not consistent with the fire protection policy in the county as a whole or does not result in levies which comply with the standard described in this section. Thereafter, such reorganized district or districts shall be deemed to be organized and operating under sections 35-501 to 35-517. Nothing herein contained shall impair, affect, or discharge any previously existing contract, obligation, lien, or charge of the district or districts.

Source: Laws 1949, c. 98, § 17, p. 270; Laws 1995, LB 589, § 8; Laws 1996, LB 1085, § 51; Laws 1998, LB 1120, § 17; Laws 2015, LB325, § 6.

Operative date July 1, 2016.

CHAPTER 37

GAME AND PARKS

Article.

2. Game Law General Provisions. 37-201.
3. Commission Powers and Duties.
 - (h) Aquatic Invasive Species Program. 37-355.
12. State Boat Act. 37-1214 to 37-1278.

ARTICLE 2

GAME LAW GENERAL PROVISIONS

Section

37-201. Law, how cited.

37-201 Law, how cited.

Sections 37-201 to 37-811 and 37-1501 to 37-1510 shall be known and may be cited as the Game Law.

Source: Laws 1929, c. 112, I, § 2, p. 408; C.S.1929, § 37-102; R.S.1943, § 37-102; Laws 1989, LB 34, § 2; Laws 1989, LB 251, § 1; Laws 1991, LB 403, § 2; Laws 1993, LB 830, § 7; Laws 1994, LB 1088, § 2; Laws 1994, LB 1165, § 6; Laws 1995, LB 274, § 1; Laws 1996, LB 923, § 2; Laws 1997, LB 19, § 2; R.S.Supp.,1997, § 37-102; Laws 1998, LB 922, § 11; Laws 1999, LB 176, § 2; Laws 2000, LB 788, § 2; Laws 2002, LB 1003, § 14; Laws 2003, LB 305, § 1; Laws 2004, LB 826, § 1; Laws 2005, LB 121, § 2; Laws 2005, LB 162, § 1; Laws 2007, LB504, § 1; Laws 2009, LB105, § 2; Laws 2010, LB743, § 3; Laws 2010, LB836, § 1; Laws 2012, LB391, § 1; Laws 2012, LB928, § 1; Laws 2014, LB699, § 1; Laws 2014, LB814, § 1; Laws 2015, LB142, § 1. Effective date March 6, 2015.

ARTICLE 3

COMMISSION POWERS AND DUTIES

(h) AQUATIC INVASIVE SPECIES PROGRAM

Section

37-355. Aquatic Invasive Species Program; activities authorized.

(h) AQUATIC INVASIVE SPECIES PROGRAM

37-355 Aquatic Invasive Species Program; activities authorized.

The Aquatic Invasive Species Program is created. Funds identified to support the program shall be used for aquatic invasive species activities which may include monitoring and sampling waters of the state for aquatic invasive species, hiring personnel, purchasing equipment to inspect and decontaminate conveyances, providing additional enforcement, education, and research relat-

ing to aquatic invasive species, and conducting aquatic invasive species projects as needed.

Source: Laws 2015, LB142, § 2.
Effective date March 6, 2015.

ARTICLE 12 STATE BOAT ACT

Section

- 37-1214. Motorboat; registration; period valid; application; registration fee; Aquatic Invasive Species Program fee; aquatic invasive species stamp.
- 37-1215. Motorboat; registration period already commenced; registration fee reduced; computation.
- 37-1219. Registration fees; fees for Aquatic Invasive Species Program; remitted to commission; when; form; duplicate copy.
- 37-1220. Fees; deposited with State Treasurer; placed in State Game Fund.
- 37-1273. Fees; placed in State Game Fund; how used.
- 37-1278. Certificate of title; application; contents; issuance; transfer of motorboat.

37-1214 Motorboat; registration; period valid; application; registration fee; Aquatic Invasive Species Program fee; aquatic invasive species stamp.

(1) Except as otherwise provided in section 37-1211, the owner of each motorboat shall register such vessel or renew the registration every three years as provided in section 37-1226. The owner of such vessel shall file an initial application for a certificate of number pursuant to section 37-1216 with a county treasurer on forms approved and provided by the commission. The application shall be signed by the owner of the vessel, shall contain the year manufactured, and shall be accompanied by a registration fee for the three-year period of not less than twenty dollars and not more than twenty-three dollars for Class 1 boats, not less than forty dollars and not more than forty-six dollars for Class 2 boats, not less than sixty dollars and not more than sixty-seven dollars and fifty cents for Class 3 boats, and not less than one hundred dollars and not more than one hundred fifteen dollars for Class 4 boats, as established by the commission pursuant to section 37-327. The owner of the motorboat shall also pay a fee established pursuant to section 37-327 of not less than five dollars and not more than ten dollars for the Aquatic Invasive Species Program at the time of registration or renewal.

(2) The owner of a motorboat not registered in Nebraska shall purchase an aquatic invasive species stamp for the Aquatic Invasive Species Program valid for one calendar year prior to launching into any waters of the state. The cost of such one-year stamp shall be established pursuant to section 37-327 and be not less than ten dollars and not more than fifteen dollars plus an issuance fee pursuant to section 37-406. Such one-year stamp may be purchased electronically or through any vendor authorized by the commission to sell other permits and stamps issued under the Game Law pursuant to section 37-406. The aquatic invasive species stamp shall be permanently affixed on the starboard and rearward side of the vessel. The proceeds from the sale of stamps shall be remitted to the State Game Fund.

(3) This subsection applies beginning on an implementation date designated by the Director of Motor Vehicles in cooperation with the commission. The director shall designate an implementation date on or before January 1, 2020, for motorboat registration. In addition to the information required under

subsection (1) of this section, the application for registration shall contain (a) the full legal name as defined in section 60-468.01 of each owner and (b)(i) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (ii) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

Source: Laws 1978, LB 21, § 14; Laws 1993, LB 235, § 36; Laws 1994, LB 123, § 1; Laws 1995, LB 376, § 2; Laws 1996, LB 464, § 2; Laws 1997, LB 720, § 1; Laws 1998, LB 922, § 396; Laws 1999, LB 176, § 111; Laws 2003, LB 305, § 20; Laws 2003, LB 306, § 21; Laws 2012, LB801, § 6; Laws 2015, LB142, § 3; Laws 2015, LB642, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB142, section 3, with LB642, section 1, to reflect all amendments.

Note: Changes made by LB142 became effective March 6, 2015. Changes made by LB642 became effective August 30, 2015.

Cross References

Game Law, see section 37-201.

37-1215 Motorboat; registration period already commenced; registration fee reduced; computation.

In the event an application is made after the beginning of any registration period for registration of any vessel not previously registered by the applicant in this state, the registration fee on such vessel shall be reduced by one thirty-sixth for each full month of the registration period already expired as of the date such vessel was acquired. The fee for the Aquatic Invasive Species Program shall not be so reduced. The county treasurer shall compute the registration fee on forms and pursuant to rules of the commission.

Source: Laws 1978, LB 21, § 15; Laws 1996, LB 464, § 3; Laws 2012, LB801, § 7; Laws 2015, LB142, § 4.
Effective date March 6, 2015.

37-1219 Registration fees; fees for Aquatic Invasive Species Program; remitted to commission; when; form; duplicate copy.

All registration fees and fees for the Aquatic Invasive Species Program received by the county treasurers shall be remitted on or before the thirtieth day of the following month to the secretary of the commission. All remittances shall be upon a form to be furnished by the commission and a duplicate copy shall be retained by the county treasurer.

Source: Laws 1978, LB 21, § 19; Laws 1996, LB 464, § 7; Laws 2012, LB801, § 11; Laws 2015, LB142, § 5.
Effective date March 6, 2015.

37-1220 Fees; deposited with State Treasurer; placed in State Game Fund.

The secretary of the commission shall deposit daily with the State Treasurer all fees received pursuant to section 37-1219 and shall take the receipt of the State Treasurer therefor. The State Treasurer shall place all of the fees so deposited in the State Game Fund.

Source: Laws 1978, LB 21, § 20; Laws 2015, LB142, § 6.
Effective date March 6, 2015.

37-1273 Fees; placed in State Game Fund; how used.

All fees as provided by the State Boat Act shall be remitted to the State Treasurer for credit to the State Game Fund to be used primarily for (1) administration and enforcement of the State Boat Act, (2) boating safety educational programs, (3) the construction and maintenance of boating and docking facilities, navigation aids, and access to boating areas and such other uses as will promote the safety and convenience of the boating public in Nebraska, (4) the Aquatic Invasive Species Program, and (5) publishing costs subject to the restrictions and limitations in section 37-324. Secondary uses for the fees shall be for the propagation, importation, protection, preservation, and distribution of game and fish and necessary equipment therefor and all things pertaining thereto.

Source: Laws 1978, LB 21, § 73; Laws 1987, LB 785, § 2; Laws 1998, LB 922, § 401; Laws 2003, LB 305, § 26; Laws 2015, LB142, § 7. Effective date March 6, 2015.

37-1278 Certificate of title; application; contents; issuance; transfer of motorboat.

(1) Application for a certificate of title shall be presented to the county treasurer, shall be made upon a form prescribed by the Department of Motor Vehicles, and shall be accompanied by the fee prescribed in section 37-1287. The owner of a motorboat for which a certificate of title is required shall obtain a certificate of title prior to registration required under section 37-1214.

(2)(a) If a certificate of title has previously been issued for the motorboat in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned. If a certificate of title has not previously been issued for the motorboat in this state, the application shall be accompanied by a certificate of number from this state, a manufacturer's or importer's certificate, a duly certified copy thereof, proof of purchase from a governmental agency or political subdivision, a certificate of title from another state, or a court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the motorboat was brought into this state from a state which does not have a certificate of title law. The county treasurer shall retain the evidence of title presented by the applicant on which the certificate of title is issued. When the evidence of title presented by the applicant is a certificate of title or an assigned registration certificate issued by another state, the department shall notify the state of prior issuance that the certificate has been surrendered. If a certificate of title has not previously been issued for the motorboat in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 37-1278.01.

(b) This subdivision applies beginning on an implementation date designated by the Director of Motor Vehicles. The director shall designate an implementation date which is on or before January 1, 2020. In addition to the information required under subdivision (2)(a) of this section, the application for a certificate of title shall contain (i) the full legal name as defined in section 60-468.01 of each owner and (ii)(A) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable,

and (B) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

(3) The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records of motorboats in his or her office. If he or she is satisfied that the applicant is the owner of the motorboat and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with his or her seal.

(4) In the case of the sale of a motorboat, the certificate of title shall be obtained in the name of the purchaser upon application signed by the purchaser, except that for titles to be held by husband and wife, applications may be accepted by the county treasurer upon the signature of either spouse as a signature for himself or herself and as an agent for his or her spouse.

(5) In all cases of transfers of motorboats, the application for a certificate of title shall be filed within thirty days after the delivery of the motorboat. A dealer need not apply for a certificate of title for a motorboat in stock or acquired for stock purposes, but upon transfer of a motorboat in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on the motorboat or an assignment of a manufacturer's or importer's certificate. If all reassignments printed on the certificate of title have been used, the dealer shall obtain title in his or her name prior to any subsequent transfer.

Source: Laws 1994, LB 123, § 6; Laws 1996, LB 464, § 14; Laws 1997, LB 635, § 14; Laws 1997, LB 720, § 5; Laws 2000, LB 1317, § 1; Laws 2012, LB801, § 15; Laws 2015, LB642, § 2.
Effective date August 30, 2015.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.



CHAPTER 38

HEALTH OCCUPATIONS AND PROFESSIONS

Article.

1. Uniform Credentialing Act. 38-101 to 38-1,141.
2. Advanced Practice Registered Nurse Practice Act. 38-206.
11. Dentistry Practice Act. 38-1101 to 38-1148.
23. Nurse Practitioner Practice Act. 38-2301 to 38-2323.
28. Pharmacy Practice Act. 38-2801 to 38-28,116.

ARTICLE 1

UNIFORM CREDENTIALING ACT

Section

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|-----------|--|
| 38-101. | Act, how cited. |
| 38-124. | Credential holder's advertisement; contents; credential; availability; identity of profession or business. |
| 38-126. | Rules and regulations; board and department; adopt. |
| 38-131. | Criminal background check; when required. |
| 38-178. | Disciplinary actions; grounds. |
| 38-1,141. | Military education, training, or service; department; acceptance for credential. |

38-101 Act, how cited.

Sections 38-101 to 38-1,141 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

- (1) The Advanced Practice Registered Nurse Practice Act;
- (2) The Alcohol and Drug Counseling Practice Act;
- (3) The Athletic Training Practice Act;
- (4) The Audiology and Speech-Language Pathology Practice Act;
- (5) The Certified Nurse Midwifery Practice Act;
- (6) The Certified Registered Nurse Anesthetist Practice Act;
- (7) The Chiropractic Practice Act;
- (8) The Clinical Nurse Specialist Practice Act;
- (9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- (10) The Dentistry Practice Act;
- (11) The Emergency Medical Services Practice Act;
- (12) The Environmental Health Specialists Practice Act;
- (13) The Funeral Directing and Embalming Practice Act;
- (14) The Genetic Counseling Practice Act;
- (15) The Hearing Instrument Specialists Practice Act;
- (16) The Licensed Practical Nurse-Certified Practice Act;
- (17) The Massage Therapy Practice Act;
- (18) The Medical Nutrition Therapy Practice Act;

- (19) The Medical Radiography Practice Act;
- (20) The Medicine and Surgery Practice Act;
- (21) The Mental Health Practice Act;
- (22) The Nurse Practice Act;
- (23) The Nurse Practitioner Practice Act;
- (24) The Nursing Home Administrator Practice Act;
- (25) The Occupational Therapy Practice Act;
- (26) The Optometry Practice Act;
- (27) The Perfusion Practice Act;
- (28) The Pharmacy Practice Act;
- (29) The Physical Therapy Practice Act;
- (30) The Podiatry Practice Act;
- (31) The Psychology Practice Act;
- (32) The Respiratory Care Practice Act;
- (33) The Veterinary Medicine and Surgery Practice Act; and
- (34) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,139 and 38-1,141 and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (33) of this section, to articles within Chapter 38.

Source: Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 355, § 8; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1; Laws 1987, LB 473, § 3; Laws 1988, LB 557, § 12; Laws 1988, LB 1100, § 4; Laws 1989, LB 323, § 2; Laws 1989, LB 344, § 4; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10; Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; R.S.Supp.,2006, § 71-101; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296, § 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1; Laws 2008, LB928, § 2; Laws 2009, LB195, § 5; Laws 2012, LB831, § 26; Laws 2015, LB264, § 1.
Effective date August 30, 2015.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

Alcohol and Drug Counseling Practice Act, see section 38-301.

Athletic Training Practice Act, see section 38-401.
Audiology and Speech-Language Pathology Practice Act, see section 38-501.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Chiropractic Practice Act, see section 38-801.
Clinical Nurse Specialist Practice Act, see section 38-901.
Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
Dentistry Practice Act, see section 38-1101.
Emergency Medical Services Practice Act, see section 38-1201.
Environmental Health Specialists Practice Act, see section 38-1301.
Funeral Directing and Embalming Practice Act, see section 38-1401.
Genetic Counseling Practice Act, see section 38-3401.
Hearing Instrument Specialists Practice Act, see section 38-1501.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Massage Therapy Practice Act, see section 38-1701.
Medical Nutrition Therapy Practice Act, see section 38-1801.
Medical Radiography Practice Act, see section 38-1901.
Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Home Administrator Practice Act, see section 38-2401.
Occupational Therapy Practice Act, see section 38-2501.
Optometry Practice Act, see section 38-2601.
Perfusion Practice Act, see section 38-2701.
Pharmacy Practice Act, see section 38-2801.
Physical Therapy Practice Act, see section 38-2901.
Podiatry Practice Act, see section 38-3001.
Psychology Practice Act, see section 38-3101.
Respiratory Care Practice Act, see section 38-3201.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-124 Credential holder's advertisement; contents; credential; availability; identity of profession or business.

(1) Any credential holder's advertisement for health care services shall identify the type of credential or credentials held by the credential holder pursuant to the definitions, titles, and abbreviations authorized under the practice act applicable to his or her credential or credentials or the examination designations required for a credential under the practice act applicable to his or her credential or credentials. The advertisement shall not include deceptive or misleading information and shall not include any affirmative communication or representation that misstates, falsely describes, or falsely represents the skills, training, expertise, education, board certification, or credential or credentials of the credential holder.

(2) Every person credentialed under the Uniform Credentialing Act shall make his or her current credential available upon request. The department, with the recommendation of the appropriate board, if any, shall determine how a consumer will be able to identify a credential holder. The method of identification shall be clear and easily accessed and used by the consumer. All signs, announcements, stationery, and advertisements of persons credentialed under the act shall identify the profession or business for which the credential is held.

Source: Laws 1927, c. 167, § 7, p. 456; C.S.1929, § 71-206; Laws 1935, c. 142, § 28, p. 529; C.S.Supp.,1941, § 71-206; Laws 1943, c. 150, § 2, p. 539; R.S.1943, § 71-107; Laws 1957, c. 298, § 6, p. 1076; Laws 1961, c. 337, § 4, p. 1051; Laws 1978, LB 406, § 2; Laws 1985, LB 129, § 2; Laws 1986, LB 286, § 28; Laws 1986, LB 579, § 20; Laws 1988, LB 557, § 14; Laws 1988, LB 1100, § 6; Laws 1989, LB 342, § 5; Laws 1993, LB 669, § 4; Laws 1994, LB 1210, § 14; Laws 1995, LB 406, § 12; Laws 1999, LB 828, § 10; Laws

2004, LB 1083, § 105; R.S.Supp.,2006, § 71-107; Laws 2007, LB236, § 3; Laws 2007, LB463, § 24; Laws 2015, LB452, § 1. Effective date August 30, 2015.

38-126 Rules and regulations; board and department; adopt.

To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health services, health-related services, and environmental services:

(1)(a) The appropriate board may adopt rules and regulations to:

(i) Specify minimum standards required for a credential, including education, experience, and eligibility for taking the credentialing examination, and on or before December 15, 2015, specify methods to meet the minimum standards through military service as provided in section 38-1,141;

(ii) Designate credentialing examinations, specify the passing score on credentialing examinations, and specify standards, if any, for accepting examination results from other jurisdictions;

(iii) Set continuing competency requirements in conformance with section 38-145;

(iv) Set standards for waiver of continuing competency requirements in conformance with section 38-146;

(v) Set standards for courses of study; and

(vi) Specify acts in addition to those set out in section 38-179 that constitute unprofessional conduct; and

(b) The department shall promulgate and enforce such rules and regulations;

(2) For professions or businesses that do not have a board created by statute:

(a) The department may adopt, promulgate, and enforce such rules and regulations; and

(b) The department shall carry out any statutory powers and duties of the board;

(3) The department, with the recommendation of the appropriate board, if any, may adopt, promulgate, and enforce rules and regulations for the respective profession, other than those specified in subdivision (1) of this section, to carry out the Uniform Credentialing Act; and

(4) The department may adopt, promulgate, and enforce rules and regulations with general applicability to carry out the Uniform Credentialing Act.

Source: Laws 1927, c. 167, § 68, p. 472; C.S.1929, § 71-902; R.S.1943, § 71-169; Laws 1996, LB 1044, § 401; R.S.1943, (2003), § 71-169; Laws 2007, LB296, § 321; Laws 2007, LB463, § 26; Laws 2015, LB264, § 2.

Effective date August 30, 2015.

38-131 Criminal background check; when required.

(1) An applicant for an initial license to practice as a registered nurse or a licensed practical nurse or to practice a profession which is authorized to prescribe controlled substances shall be subject to a criminal background check. Except as provided in subsection (3) of this section, the applicant shall submit with the application a full set of fingerprints which shall be forwarded

to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(2) This section shall not apply to a dentist who is an applicant for a dental locum tenens under section 38-1122, to a physician or osteopathic physician who is an applicant for a physician locum tenens under section 38-2036, or to a veterinarian who is an applicant for a veterinarian locum tenens under section 38-3335.

(3) An applicant for a temporary educational permit as defined in section 38-2019 shall have ninety days from the issuance of the permit to comply with subsection (1) of this section and shall have his or her permit suspended after such ninety-day period if the criminal background check is not complete or revoked if the criminal background check reveals that the applicant was not qualified for the permit.

Source: Laws 2005, LB 306, § 2; Laws 2005, LB 382, § 15; Laws 2006, LB 833, § 1; R.S.Supp.,2006, § 71-104.01; Laws 2007, LB247, § 60; Laws 2007, LB463, § 31; Laws 2007, LB481, § 2; Laws 2011, LB687, § 1; Laws 2015, LB129, § 1.
Effective date August 30, 2015.

38-178 Disciplinary actions; grounds.

Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-185 or 38-186 on any of the following grounds:

(1) Misrepresentation of material facts in procuring or attempting to procure a credential;

(2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;

(3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

(4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

(5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

(7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

(8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;

(9) Illness, deterioration, or disability that impairs the ability to practice the profession;

(10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;

(11) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;

(12) Use of untruthful, deceptive, or misleading statements in advertisements, including failure to comply with section 38-124;

(13) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(14) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(15) Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;

(16) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;

(17) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(18) Failure to file a report required by section 38-1,124, 38-1,125, or 71-552;

(19) Failure to maintain the requirements necessary to obtain a credential;

(20) Violation of an order issued by the department;

(21) Violation of an assurance of compliance entered into under section 38-1,108;

(22) Failure to pay an administrative penalty;

(23) Unprofessional conduct as defined in section 38-179; or

(24) Violation of the Automated Medication Systems Act.

Source: Laws 1927, c. 167, § 46, p. 466; C.S.1929, § 71-601; Laws 1943, c. 150, § 10, p. 541; R.S.1943, § 71-147; Laws 1976, LB 877, § 1; Laws 1979, LB 95, § 1; Laws 1986, LB 286, § 45; Laws 1986, LB 579, § 37; Laws 1986, LB 926, § 24; Laws 1987, LB 473, § 15; Laws 1988, LB 1100, § 16; Laws 1991, LB 456, § 7; Laws 1992, LB 1019, § 37; Laws 1993, LB 536, § 44; Laws 1994, LB 1210, § 25; Laws 1994, LB 1223, § 6; Laws 1997, LB 622, § 79; Laws 1999, LB 366, § 8; Laws 2001, LB 398, § 20; Laws 2005, LB 301, § 9; R.S.Supp.,2006, § 71-147; Laws 2007, LB463, § 78; Laws 2008, LB308, § 10; Laws 2011, LB591, § 2; Laws 2015, LB452, § 2.

Effective date August 30, 2015.

Cross References

Automated Medication Systems Act, see section 71-2444.

Uniform Controlled Substances Act, see section 28-401.01.

Uniform Deceptive Trade Practices Act, see section 87-306.

38-1,141 Military education, training, or service; department; acceptance for credential.

Beginning December 15, 2015, upon presentation of satisfactory evidence that the education, training, or service completed by an applicant for a credential while a member of the armed forces of the United States, active or reserve, the National Guard of any state, the military reserves of any state, or the naval militia of any state is substantially similar to the education required for the credential, the department, with the recommendation of the appropriate board, if any, shall accept such education, training, or service toward the minimum standards for the credential.

Source: Laws 2015, LB264, § 3.

Effective date August 30, 2015.

ARTICLE 2

ADVANCED PRACTICE REGISTERED NURSE PRACTICE ACT

Section

38-206. Board; duties.

38-206 Board; duties.

The board shall:

(1) Establish standards for integrated practice agreements between collaborating physicians and certified nurse midwives;

(2) Monitor the scope of practice by certified nurse midwives, certified registered nurse anesthetists, clinical nurse specialists, and nurse practitioners;

(3) Recommend disciplinary action relating to licenses of advanced practice registered nurses, certified nurse midwives, certified registered nurse anesthetists, clinical nurse specialists, and nurse practitioners;

(4) Engage in other activities not inconsistent with the Advanced Practice Registered Nurse Practice Act, the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, and the Nurse Practitioner Practice Act; and

(5) Adopt rules and regulations to implement the Advanced Practice Registered Nurse Practice Act, the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, and the Nurse Practitioner Practice Act, for promulgation by the department as provided in section 38-126. Such rules and regulations shall also include: (a) Approved certification organizations and approved certification programs; and (b) professional liability insurance.

Source: Laws 1996, LB 414, § 28; Laws 2000, LB 1115, § 43; Laws 2002, LB 1021, § 56; R.S.1943, (2003), § 71-1718.02; Laws 2005, LB 256, § 40; R.S.Supp.,2006, § 71-17,135; Laws 2007, LB185, § 37; Laws 2007, LB463, § 145; Laws 2015, LB107, § 1.

Effective date August 30, 2015.

Cross References

Certified Nurse Midwifery Practice Act, see section 38-601.

Certified Registered Nurse Anesthetist Practice Act, see section 38-701.

Clinical Nurse Specialist Practice Act, see section 38-901.

Nurse Practitioner Practice Act, see section 38-2301.

ARTICLE 11 DENTISTRY PRACTICE ACT

Section

| | |
|-------------|---|
| 38-1101. | Act, how cited. |
| 38-1102. | Definitions, where found. |
| 38-1106.01. | Deep sedation, defined. |
| 38-1108. | General anesthesia, defined. |
| 38-1112. | Minimal sedation, defined. |
| 38-1113. | Moderate sedation, defined. |
| 38-1137. | Administration of anesthesia or sedation; permit required; exception. |
| 38-1138. | Violations; effect. |
| 38-1139. | Permit to administer general anesthesia or deep sedation; issuance; conditions; existing permit; how treated. |
| 38-1140. | Permit to administer moderate sedation; issuance; conditions; existing permit; how treated. |
| 38-1141. | Permit to administer minimal sedation; issuance; conditions; termination of existing permit. |
| 38-1142. | Presence of licensed dental hygienist or dental assistant required. |
| 38-1143. | Assistant; certification required. |
| 38-1144. | Administration of anesthesia, sedation, or analgesia; limitation. |
| 38-1145. | Permits; term; department; adopt rules and regulations. |
| 38-1146. | Inspection of practice location. |
| 38-1147. | Incident report; contents; failure to submit; penalty. |
| 38-1148. | Department; permits to administer anesthesia or sedation; administration of analgesia; adopt rules and regulations. |

38-1101 Act, how cited.

Sections 38-1101 to 38-1151 shall be known and may be cited as the Dentistry Practice Act.

Source: Laws 2007, LB463, § 434; Laws 2015, LB80, § 1.
Operative date July 1, 2016.

38-1102 Definitions, where found.

For purposes of the Dentistry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1103 to 38-1113 apply.

Source: Laws 2007, LB463, § 435; Laws 2015, LB80, § 2.
Operative date July 1, 2016.

38-1106.01 Deep sedation, defined.

Deep sedation means a drug-induced depression of consciousness during which (1) a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation, (2) the ability to independently maintain ventilatory function may be impaired, (3) a patient may require assistance in maintaining a patent airway and spontaneous ventilation may be inadequate, and (4) cardiovascular function is usually maintained.

Source: Laws 2015, LB80, § 3.
Operative date July 1, 2016.

38-1108 General anesthesia, defined.

General anesthesia means a drug-induced loss of consciousness during which (1) a patient is not arousable, even by painful stimulation, (2) the ability to independently maintain ventilatory function is often impaired, (3) a patient often requires assistance in maintaining a patent airway and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function, and (4) cardiovascular function may be impaired.

Source: Laws 2007, LB463, § 441; Laws 2015, LB80, § 4.
Operative date July 1, 2016.

38-1112 Minimal sedation, defined.

Minimal sedation means a drug-induced depression of consciousness during which (1) a patient retains the ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command, (2) cognitive function and coordination may be modestly impaired, and (3) ventilatory and cardiovascular functions are unaffected.

Source: Laws 2007, LB463, § 445; Laws 2015, LB80, § 5.
Operative date July 1, 2016.

38-1113 Moderate sedation, defined.

Moderate sedation means a drug-induced depression of consciousness during which (1) a patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation, (2) no intervention is required to maintain a patent airway and spontaneous ventilation is adequate, and (3) cardiovascular function is usually maintained.

Source: Laws 2007, LB463, § 446; Laws 2015, LB80, § 6.
Operative date July 1, 2016.

38-1137 Administration of anesthesia or sedation; permit required; exception.

A dentist licensed in this state shall not administer general anesthesia, deep sedation, moderate sedation, or minimal sedation in the practice of dentistry unless he or she has been issued the appropriate permit pursuant to the Dentistry Practice Act. A dentist licensed in this state may administer inhalation analgesia in the practice of dentistry without a permit pursuant to the act.

Source: Laws 1986, LB 438, § 3; R.S.1943, (2003), § 71-193.23; Laws 2007, LB463, § 470; Laws 2015, LB80, § 7.
Operative date July 1, 2016.

38-1138 Violations; effect.

A violation of provisions of the Dentistry Practice Act relating to the administration of general anesthesia, deep sedation, moderate sedation, minimal sedation, or inhalation analgesia may result in action against the dentist's permit, license, or both pursuant to section 38-196.

Source: Laws 1986, LB 438, § 5; Laws 1988, LB 1100, § 33; R.S.1943, (2003), § 71-193.25; Laws 2007, LB463, § 471; Laws 2015, LB80, § 8.
Operative date July 1, 2016.

38-1139 Permit to administer general anesthesia or deep sedation; issuance; conditions; existing permit; how treated.

(1) The department, with the recommendation of the board, shall issue a permit to a Nebraska-licensed dentist to administer general anesthesia or deep sedation on an outpatient basis to dental patients if the dentist:

(a) Maintains a properly equipped facility for the administration of general anesthesia or deep sedation as determined by the board;

(b) Is currently certified in basic life-support skills for health care providers as determined by the board and either advanced cardiac life support or an appropriate emergency management course for anesthesia and dental sedation as determined by the board;

(c) Has successfully completed an onsite evaluation covering the areas of physical evaluation, monitoring, sedation, and emergency medicine; and

(d) Meets at least one of the following criteria:

(i) Has completed an advanced education program approved by the board that affords comprehensive and appropriate training necessary to administer and manage general anesthesia or deep sedation; or

(ii) Is a fellow of the American Dental Society of Anesthesiology.

(2) A dentist who has been issued a permit pursuant to this section may administer moderate or minimal sedation.

(3) A dentist who has been issued a permit to administer general anesthesia pursuant to this section prior to July 1, 2016, may administer deep, moderate, or minimal sedation.

Source: Laws 1986, LB 438, § 6; R.S.1943, (2003), § 71-193.26; Laws 2007, LB463, § 472; Laws 2015, LB80, § 9.
Operative date July 1, 2016.

38-1140 Permit to administer moderate sedation; issuance; conditions; existing permit; how treated.

(1) The department, with the recommendation of the board, shall issue a permit to a Nebraska-licensed dentist to administer moderate sedation on an outpatient basis to dental patients if the dentist:

(a) Maintains a properly equipped facility for the administration of moderate sedation as determined by the board;

(b) Is currently certified in basic life-support skills for health care providers as determined by the board and either advanced cardiac life support or an appropriate emergency management course for anesthesia and dental sedation as determined by the board;

(c) Has successfully completed an onsite evaluation covering the areas of physical evaluation, monitoring, sedation, and emergency medicine; and

(d) Meets at least one of the following criteria:

(i) Has completed an advanced education program approved by the board that affords comprehensive and appropriate training necessary to administer and manage moderate sedation; or

(ii) Is a fellow of the American Dental Society of Anesthesiology.

(2) A dentist who has been issued a permit pursuant to this section may administer minimal sedation.

(3) A dentist who has been issued a permit to administer parenteral sedation pursuant to this section prior to July 1, 2016, may administer moderate or minimal sedation.

Source: Laws 1986, LB 438, § 7; R.S.1943, (2003), § 71-193.27; Laws 2007, LB463, § 473; Laws 2015, LB80, § 10.
Operative date July 1, 2016.

38-1141 Permit to administer minimal sedation; issuance; conditions; termination of existing permit.

(1) The department, with the recommendation of the board, shall issue a permit to a Nebraska-licensed dentist to administer minimal sedation on an outpatient basis to dental patients if the dentist:

(a) Maintains a properly equipped facility for the administration of minimal sedation as determined by the board;

(b) Is currently certified in basic life-support skills for health care providers as determined by the board and, if providing minimal sedation for persons twelve years of age and under, is currently certified in pediatric advanced life support as determined by the board; and

(c) Meets at least one of the following criteria:

(i) Has completed an advanced education program approved by the board that affords comprehensive and appropriate training necessary to administer and manage minimal sedation; or

(ii) Has completed training to the level of competency in minimal sedation consistent with the standards set by the American Dental Association as determined by the board or a comprehensive training program in minimal sedation as approved by the board.

(2) An inhalation analgesia permit issued pursuant to this section prior to July 1, 2016, terminates on such date.

Source: Laws 1986, LB 438, § 9; R.S.1943, (2003), § 71-193.29; Laws 2007, LB463, § 474; Laws 2015, LB80, § 11.
Operative date July 1, 2016.

38-1142 Presence of licensed dental hygienist or dental assistant required.

General anesthesia, deep sedation, moderate sedation, and minimal sedation shall not be administered by a dentist without the presence and assistance of a licensed dental hygienist or a dental assistant.

Source: Laws 1986, LB 438, § 8; Laws 1999, LB 800, § 9; R.S.1943, (2003), § 71-193.28; Laws 2007, LB463, § 475; Laws 2015, LB80, § 12.
Operative date July 1, 2016.

38-1143 Assistant; certification required.

Any person who assists a dentist in the administration of general anesthesia, deep sedation, moderate sedation, or minimal sedation shall be currently certified in basic life-support skills or the equivalent thereof.

Source: Laws 1986, LB 438, § 13; R.S.1943, (2003), § 71-193.33; Laws 2007, LB463, § 476; Laws 2015, LB80, § 13.
Operative date July 1, 2016.

38-1144 Administration of anesthesia, sedation, or analgesia; limitation.

Nothing in the Dentistry Practice Act shall be construed to allow a dentist to administer to himself or herself, or to any person other than in the course of the practice of dentistry, any drug or agent used for general anesthesia, deep sedation, moderate sedation, minimal sedation, or inhalation analgesia.

Source: Laws 1986, LB 438, § 10; R.S.1943, (2003), § 71-193.30; Laws 2007, LB463, § 477; Laws 2015, LB80, § 14.
Operative date July 1, 2016.

38-1145 Permits; term; department; adopt rules and regulations.

(1) Permits issued for the administration of general anesthesia or deep sedation, moderate sedation, or minimal sedation pursuant to the Dentistry Practice Act shall be valid until March 1 of the next odd-numbered year after issuance. A permit issued for the administration of general anesthesia prior to July 1, 2016, shall remain valid subject to the Dentistry Practice Act until March 1 of the next odd-numbered year, and it may be renewed subject to the Dentistry Practice Act as a general anesthesia or deep sedation permit. A permit issued for the administration of parenteral sedation prior to July 1, 2016, shall remain valid subject to the Dentistry Practice Act until March 1 of the next odd-numbered year, and it may be renewed subject to the Dentistry Practice Act as a moderate sedation permit.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to define criteria for the reevaluation of credentials, facilities, equipment, dental hygienists, and dental assistants and procedures of a previously qualified dentist to renew his or her permit for each subsequent renewal.

Source: Laws 1986, LB 438, § 11; Laws 1988, LB 1100, § 34; Laws 1999, LB 800, § 10; Laws 2003, LB 242, § 38; R.S.1943, (2003), § 71-193.31; Laws 2007, LB463, § 478; Laws 2015, LB80, § 15.
Operative date July 1, 2016.

38-1146 Inspection of practice location.

All practice locations of a dentist applying for a permit to administer general anesthesia or deep sedation, moderate sedation, or minimal sedation may be inspected at the discretion of the board. The board may contract to have such inspections performed. The board shall not delegate authority to review and to make recommendations on permit applications or to determine the persons or facilities to be inspected.

Source: Laws 1986, LB 438, § 12; R.S.1943, (2003), § 71-193.32; Laws 2007, LB463, § 479; Laws 2015, LB80, § 16.
Operative date July 1, 2016.

38-1147 Incident report; contents; failure to submit; penalty.

(1) All licensed dentists practicing in this state shall submit a report to the board within thirty days of any incident which results in death or physical or mental injury requiring hospitalization of a patient which occurs in the outpatient facilities of such dentist during, or as a direct result of, general anesthesia, deep sedation, moderate sedation, minimal sedation, or inhalation analgesia.

(2) The incident report shall include, but not be limited to:

- (a) A description of the dental procedure;
 - (b) A description of the preoperative physical condition of the patient;
 - (c) A list of the drugs and the dosage administered;
 - (d) A detailed description of the techniques used in administering the drugs;
 - (e) A description of the incident, including, but not limited to, a detailed description of the symptoms of any complications, the symptoms of onset, and the type of symptoms in the patient;
 - (f) A description of the treatment instituted;
 - (g) A description of the patient's response to the treatment; and
 - (h) A description of the patient's condition on termination of any procedures undertaken.
- (3) Failure to submit an incident report as required by this section shall result in the loss of the permit.

Source: Laws 1986, LB 438, § 14; R.S.1943, (2003), § 71-193.34; Laws 2007, LB463, § 480; Laws 2015, LB80, § 17.
Operative date July 1, 2016.

38-1148 Department; permits to administer anesthesia or sedation; administration of analgesia; adopt rules and regulations.

The department, with the recommendation of the board, may adopt and promulgate rules and regulations necessary to carry out the provisions of the Dentistry Practice Act relating to permits to administer general anesthesia or deep sedation, moderate sedation, or minimal sedation and relating to administration of inhalation analgesia.

Source: Laws 1986, LB 438, § 15; R.S.1943, (2003), § 71-193.35; Laws 2007, LB463, § 481; Laws 2015, LB80, § 18.
Operative date July 1, 2016.

ARTICLE 23

NURSE PRACTITIONER PRACTICE ACT

| | |
|-------------|--|
| Section | |
| 38-2301. | Act, how cited. |
| 38-2302. | Definitions, where found. |
| 38-2310. | Transferred to section 38-2314.01. |
| 38-2314.01. | Transition-to-practice agreement, defined. |
| 38-2315. | Nurse practitioner; functions; scope. |
| 38-2322. | Nurse practitioner; license; requirements; practice as nurse practitioner; requirements; transition-to-practice agreement; contents. |
| 38-2323. | Nurse practitioner; actions not prohibited. |

38-2301 Act, how cited.

Sections 38-2301 to 38-2324 shall be known and may be cited as the Nurse Practitioner Practice Act.

Source: Laws 1981, LB 379, § 1; Laws 1984, LB 724, § 2; Laws 1996, LB 414, § 11; Laws 2000, LB 1115, § 26; Laws 2005, LB 256, § 47; R.S.Supp.,2006, § 71-1704; Laws 2007, LB463, § 793; Laws 2012, LB1042, § 1; Laws 2015, LB107, § 2.
Effective date August 30, 2015.

38-2302 Definitions, where found.

For purposes of the Nurse Practitioner Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2303 to 38-2314.01 apply.

Source: Laws 1981, LB 379, § 3; Laws 1984, LB 724, § 3; Laws 1992, LB 1019, § 70; Laws 1996, LB 414, § 13; Laws 2000, LB 1115, § 28; Laws 2005, LB 256, § 48; R.S.Supp.,2006, § 71-1706; Laws 2007, LB463, § 794; Laws 2015, LB107, § 3.
Effective date August 30, 2015.

38-2310 Transferred to section 38-2314.01.**38-2314.01 Transition-to-practice agreement, defined.**

Transition-to-practice agreement means a collaborative agreement between a nurse practitioner and a supervising provider which provides for the delivery of health care through a collaborative practice and which meets the requirements of section 38-2322.

Source: Laws 1984, LB 724, § 9; Laws 1996, LB 414, § 21; Laws 2000, LB 1115, § 39; Laws 2005, LB 256, § 54; R.S.Supp.,2006, § 71-1716.03; Laws 2007, LB463, § 802; R.S.1943, (2008), § 38-2310; Laws 2015, LB107, § 4.
Effective date August 30, 2015.

38-2315 Nurse practitioner; functions; scope.

(1) A nurse practitioner may provide health care services within specialty areas. A nurse practitioner shall function by establishing collaborative, consultative, and referral networks as appropriate with other health care professionals. Patients who require care beyond the scope of practice of a nurse practitioner shall be referred to an appropriate health care provider.

(2) Nurse practitioner practice means health promotion, health supervision, illness prevention and diagnosis, treatment, and management of common health problems and acute and chronic conditions, including:

(a) Assessing patients, ordering diagnostic tests and therapeutic treatments, synthesizing and analyzing data, and applying advanced nursing principles;

(b) Dispensing, incident to practice only, sample medications which are provided by the manufacturer and are provided at no charge to the patient; and

(c) Prescribing therapeutic measures and medications relating to health conditions within the scope of practice.

(3) A nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty may manage the care of patients committed under the Nebraska Mental Health Commitment Act. Patients who require care beyond the scope of practice of a nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty shall be referred to an appropriate health care provider.

(4) A nurse practitioner may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the nurse practitioner and are not otherwise prohibited by law.

Source: Laws 1981, LB 379, § 18; Laws 1984, LB 724, § 14; Laws 1996, LB 414, § 25; Laws 2000, LB 1115, § 44; Laws 2005, LB 256, § 57; Laws 2006, LB 994, § 96; R.S.Supp.,2006, § 71-1721; Laws 2007, LB463, § 807; Laws 2012, LB1042, § 2; Laws 2013, LB243, § 1; Laws 2015, LB107, § 5.
Effective date August 30, 2015.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

38-2322 Nurse practitioner; license; requirements; practice as nurse practitioner; requirements; transition-to-practice agreement; contents.

(1) In order to be licensed as a nurse practitioner, an individual who has a master's degree or doctorate degree in nursing and has completed an approved nurse practitioner program and who can demonstrate separate course work in pharmacotherapeutics, advanced health assessment, and pathophysiology or psychopathology shall submit to the department proof of professional liability insurance required under section 38-2320.

(2) In order to practice as a nurse practitioner in this state, an individual who holds or has held a license as a nurse practitioner in this state or in another state shall submit to the department a transition-to-practice agreement or evidence of completion of two thousand hours of practice as a nurse practitioner which have been completed under a transition-to-practice agreement, under a collaborative agreement, under an integrated practice agreement, through independent practice, or under any combination of such agreements and practice, as allowed in this state or another state.

(3)(a) A transition-to-practice agreement shall be a formal written agreement that provides that the nurse practitioner and the supervising provider practice collaboratively within the framework of their respective scopes of practice.

(b) The nurse practitioner and the supervising provider shall each be responsible for his or her individual decisions in managing the health care of patients through consultation, collaboration, and referral. The nurse practitioner and the supervising provider shall have joint responsibility for the delivery of health care to a patient based upon the scope of practice of the nurse practitioner and the supervising provider.

(c) The supervising provider shall be responsible for supervision of the nurse practitioner to ensure the quality of health care provided to patients.

(d) In order for a nurse practitioner to be a supervising provider for purposes of a transition-to-practice agreement, the nurse practitioner shall submit to the department evidence of completion of ten thousand hours of practice as a nurse practitioner which have been completed under a transition-to-practice agreement, under a collaborative agreement, under an integrated practice agreement, through independent practice, or under any combination of such agreements or practice, as allowed in this state or another state.

(4) For purposes of this section:

(a) Supervising provider means a physician, osteopathic physician, or nurse practitioner licensed and practicing in Nebraska and practicing in the same

practice specialty, related specialty, or field of practice as the nurse practitioner being supervised; and

(b) Supervision means the ready availability of the supervising provider for consultation and direction of the activities of the nurse practitioner being supervised within such nurse practitioner’s defined scope of practice.

Source: Laws 1996, LB 414, § 33; Laws 2000, LB 1115, § 49; Laws 2002, LB 1062, § 46; Laws 2005, LB 256, § 62; R.S.Supp.,2006, § 71-1723.02; Laws 2007, LB185, § 9; Laws 2007, LB463, § 814; Laws 2015, LB107, § 6.
Effective date August 30, 2015.

38-2323 Nurse practitioner; actions not prohibited.

Nothing in the Nurse Practitioner Practice Act shall prohibit a nurse practitioner from consulting or collaborating with and referring patients to health care providers not included in the nurse practitioner’s transition-to-practice agreement.

Source: Laws 1996, LB 414, § 34; Laws 2000, LB 1115, § 50; Laws 2005, LB 256, § 63; R.S.Supp.,2006, § 71-1723.03; Laws 2007, LB463, § 815; Laws 2015, LB107, § 7.
Effective date August 30, 2015.

ARTICLE 28

PHARMACY PRACTICE ACT

| | |
|-------------|---|
| Section | |
| 38-2801. | Act, how cited. |
| 38-2802. | Definitions, where found. |
| 38-2808.01. | Calculated expiration date, defined. |
| 38-2810. | Chart order, defined. |
| 38-2811. | Compounding, defined. |
| 38-2819. | Drugs, medicines, and medicinal substances, defined. |
| 38-2825.01. | Hospital pharmacy, defined. |
| 38-2831. | Pharmaceutical care, defined. |
| 38-2833. | Pharmacist in charge, defined. |
| 38-2837. | Practice of pharmacy, defined. |
| 38-2843. | Public health clinic worker, defined. |
| 38-2845.01. | Telepharmacy, defined. |
| 38-2848. | Repealed. Laws 2015, LB 37, § 93. |
| 38-2850. | Pharmacy; practice; persons excepted. |
| 38-2866. | Pharmacist; powers. |
| 38-2866.01. | Pharmacist; supervision of pharmacy technicians and pharmacist interns. |
| 38-2867. | Pharmacy; scope of practice; prohibited acts; violation; penalty. |
| 38-2867.01. | Authority to compound; standards; labeling; prohibited acts. |
| 38-2867.02. | Pharmacist in charge of hospital pharmacy; duties. |
| 38-2869. | Prospective drug utilization review; counseling; requirements. |
| 38-2870. | Medical order; duration; dispensing; transmission. |
| 38-2884. | Delegated dispensing permit; public health clinic; dispensing requirements. |
| 38-2887. | Delegated dispensing permit; worker; proficiency demonstration; supervision; liability. |
| 38-2890. | Pharmacy technicians; registration; requirements; certification. |
| 38-2892. | Pharmacy technicians; responsibility for supervision and performance. |
| 38-2895. | Pharmacy technician; discipline against supervising pharmacist; enforcement orders. |
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- 38-28,105. Chart order; contents.
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- 38-28,107. Collection or return of dispensed drugs and devices; conditions; fee; liability; professional disciplinary action.
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38-2801 Act, how cited.

Sections 38-2801 to 38-28,107 and the Nebraska Drug Product Selection Act shall be known and may be cited as the Pharmacy Practice Act.

Source: Laws 2007, LB247, § 79; Laws 2007, LB463, § 897; Laws 2009, LB195, § 47; Laws 2009, LB604, § 1; Laws 2011, LB179, § 2; Laws 2015, LB37, § 29.
Effective date August 30, 2015.

Cross References

Nebraska Drug Product Selection Act, see section 38-28,108.

38-2802 Definitions, where found.

For purposes of the Pharmacy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2803 to 38-2847 apply.

Source: Laws 2007, LB463, § 898; Laws 2009, LB195, § 48; Laws 2009, LB604, § 2; Laws 2011, LB179, § 3; Laws 2015, LB37, § 30.
Effective date August 30, 2015.

38-2808.01 Calculated expiration date, defined.

Calculated expiration date means the expiration date on the manufacturer's, packager's, or distributor's container or one year from the date the drug or device is repackaged, whichever is earlier.

Source: Laws 2015, LB37, § 31.
Effective date August 30, 2015.

38-2810 Chart order, defined.

Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital or long-term care facility where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription and may not be used to authorize dispensing of a controlled substance to a patient in a long-term care facility.

Source: Laws 2007, LB463, § 906; Laws 2015, LB37, § 32.
Effective date August 30, 2015.

38-2811 Compounding, defined.

Compounding means the preparation of components into a drug product.

Source: Laws 2007, LB463, § 907; Laws 2015, LB37, § 33.
Effective date August 30, 2015.

38-2819 Drugs, medicines, and medicinal substances, defined.

Drugs, medicines, and medicinal substances means (1) articles recognized in The United States Pharmacopeia and The National Formulary, the Homeopathic Pharmacopoeia of the United States, or any supplement to any of them, (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (3) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (4) articles intended for use as a component of any articles specified in subdivision (1), (2), or (3) of this section, except any device or its components, parts, or accessories, and (5) prescription drugs or devices.

Source: Laws 2007, LB463, § 915; Laws 2015, LB37, § 34.
Effective date August 30, 2015.

38-2825.01 Hospital pharmacy, defined.

Hospital pharmacy means each facility licensed as a hospital in which the compounding, preparation for administration, or dispensing of drugs or devices pursuant to a chart order occurs for patients within the confines of the hospital with oversight by a pharmacist in charge.

Source: Laws 2015, LB37, § 35.
Effective date August 30, 2015.

38-2831 Pharmaceutical care, defined.

(1) Pharmaceutical care means the provision of drug therapy by a pharmacist for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes include (a) the cure of disease, (b) the elimination or reduction of a patient's symptomatology, (c) the arrest or slowing of a disease process, or (d) the prevention of a disease or symptomatology.

(2) Pharmaceutical care includes the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient.

Source: Laws 2007, LB463, § 927; Laws 2015, LB37, § 36.
Effective date August 30, 2015.

38-2833 Pharmacist in charge, defined.

Pharmacist in charge means a pharmacist who is designated on a pharmacy license or designated by a hospital as being responsible for the practice of pharmacy in the pharmacy for which a pharmacy license is issued or in a hospital pharmacy and who works within the physical confines of such pharmacy or hospital pharmacy.

Source: Laws 2007, LB463, § 929; Laws 2015, LB37, § 37.
Effective date August 30, 2015.

38-2837 Practice of pharmacy, defined.

(1) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, (h) medication therapy management, and (i) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records.

(2) The active practice of pharmacy means the performance of the functions set out in this section by a pharmacist as his or her principal or ordinary occupation.

Source: Laws 2007, LB463, § 933; Laws 2015, LB37, § 38.
Effective date August 30, 2015.

38-2843 Public health clinic worker, defined.

Public health clinic worker means a person in a public health clinic with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of contraceptives pursuant to a written prescription.

Source: Laws 2007, LB463, § 939; Laws 2015, LB37, § 39.
Effective date August 30, 2015.

38-2845.01 Telepharmacy, defined.

Telepharmacy means the provision of pharmacist care, by a pharmacist located within the United States, using telecommunications, remote order entry, or other automations and technologies to deliver care to patients or their agents who are located at sites other than where the pharmacist is located.

Source: Laws 2015, LB37, § 40.
Effective date August 30, 2015.

38-2848 Repealed. Laws 2015, LB 37, § 93.**38-2850 Pharmacy; practice; persons excepted.**

As authorized by the Uniform Credentialing Act, the practice of pharmacy may be engaged in by a pharmacist, a pharmacist intern, or a practitioner with a pharmacy license. The practice of pharmacy shall not be construed to include:

(1) Practitioners, other than veterinarians, certified nurse midwives, certified registered nurse anesthetists, nurse practitioners, and physician assistants, who dispense drugs or devices as an incident to the practice of their profession, except that if such practitioner engages in dispensing such drugs or devices to his or her patients for which such patients are charged, such practitioner shall obtain a pharmacy license;

(2) Persons who sell, offer, or expose for sale nonprescription drugs or proprietary medicines, the sale of which is not in itself a violation of the Nebraska Liquor Control Act;

(3) Medical representatives, detail persons, or persons known by some name of like import, but only to the extent of permitting the relating of pharmaceutical information to health care professionals;

- (4) Licensed veterinarians practicing within the scope of their profession;
- (5) Certified nurse midwives, certified registered nurse anesthetists, nurse practitioners, and physician assistants who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient;
- (6) Optometrists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents as authorized under the Optometry Practice Act, and ophthalmologists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents;
- (7) Registered nurses or licensed practical nurses employed by a hospital who administer pursuant to a chart order, or procure for such purpose, single doses of drugs or devices from original drug or device containers or properly labeled repackaged or prepackaged drug or device containers to persons registered as patients and within the confines of the hospital;
- (8) Persons employed by a facility where dispensed drugs and devices are delivered from a pharmacy for pickup by a patient or caregiver and no dispensing or storage of drugs or devices occurs;
- (9) Persons who sell or purchase medical products, compounds, vaccines, or serums used in the prevention or cure of animal diseases and maintenance of animal health if such medical products, compounds, vaccines, or serums are not sold or purchased under a direct, specific, written medical order of a licensed veterinarian;
- (10) A person accredited by an accrediting body who, pursuant to a medical order, (a) administers, dispenses, or distributes medical gas or medical gas devices to patients or ultimate users or (b) purchases or receives medical gas or medical gas devices for administration, dispensing, or distribution to patients or ultimate users; and
- (11) A person accredited by an accrediting body who, pursuant to a medical order, (a) sells, delivers, or distributes devices described in subsection (2) of section 38-2841 to patients or ultimate users or (b) purchases or receives such devices with intent to sell, deliver, or distribute to patients or ultimate users.

Source: Laws 1927, c. 167, § 121, p. 490; C.S.1929, § 71-1802; R.S.1943, § 71-1,143; Laws 1961, c. 339, § 2, p. 1062; Laws 1971, LB 350, § 2; Laws 1983, LB 476, § 7; Laws 1994, LB 900, § 3; Laws 1996, LB 414, § 7; Laws 1996, LB 1108, § 15; Laws 2000, LB 1115, § 18; Laws 2001, LB 398, § 29; Laws 2005, LB 256, § 30; R.S.Supp.,2006, § 71-1,143; Laws 2007, LB463, § 946; Laws 2009, LB604, § 7; Laws 2010, LB849, § 10; Laws 2015, LB37, § 41.

Effective date August 30, 2015.

Cross References

Nebraska Liquor Control Act, see section 53-101.

Optometry Practice Act, see section 38-2601.

38-2866 Pharmacist; powers.

Unless specifically limited by the board or the department, a pharmacist may (1) engage in the practice of pharmacy and telepharmacy, (2) use automation in

the practice of pharmacy and telepharmacy, (3) use the abbreviation R.P., RP, R.Ph., or RPh or the title licensed pharmacist or pharmacist, (4) enter into delegated dispensing agreements, (5) supervise pharmacy technicians and pharmacist interns, and (6) possess, without dispensing, prescription drugs and devices, including controlled substances, for purposes of administration, repackaging, or educational use in an accredited pharmacy program. A pharmacy shall not be open for the practice of pharmacy unless a pharmacist is physically present.

Source: Laws 2001, LB 398, § 33; R.S.1943, (2003), § 71-1,143.03; Laws 2007, LB463, § 962; Laws 2008, LB308, § 11; Laws 2015, LB37, § 42.

Effective date August 30, 2015.

38-2866.01 Pharmacist; supervision of pharmacy technicians and pharmacist interns.

A pharmacist may supervise any combination of pharmacy technicians and pharmacist interns at any time up to a total of three people. This section does not apply to a pharmacist intern who is receiving experiential training directed by the accredited pharmacy program in which he or she is enrolled.

Source: Laws 2015, LB37, § 43.

Effective date August 30, 2015.

38-2867 Pharmacy; scope of practice; prohibited acts; violation; penalty.

(1) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (10) or (11) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, no person other than a licensed pharmacist, a pharmacist intern, or a practitioner with a pharmacy license shall provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a pharmacist or pharmacist intern may dispense drugs or devices pursuant to a medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (10) or (11) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacist intern, a licensed pharmacist, or a practitioner with a pharmacy license to provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order.

(3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a health care professional regulated pursuant to the Uniform Credentialing Act shall be considered an act of unprofessional conduct. A violation of this subsection by a facility shall be prima facie evidence in an action against the license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this sub-

section has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Source: Laws 1927, c. 167, § 127, p. 493; C.S.1929, § 71-1808; R.S.1943, § 71-1,147; Laws 1961, c. 339, § 3, p. 1063; Laws 1971, LB 350, § 5; Laws 1983, LB 476, § 15; Laws 1993, LB 536, § 50; Laws 1994, LB 900, § 4; Laws 1996, LB 1108, § 16; Laws 1999, LB 594, § 44; Laws 2001, LB 398, § 34; R.S.1943, (2003), § 71-1,147; Laws 2007, LB236, § 30; Laws 2007, LB247, § 81; Laws 2007, LB463, § 963; Laws 2009, LB604, § 8; Laws 2010, LB849, § 11; Laws 2015, LB37, § 44.
Effective date August 30, 2015.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2867.01 Authority to compound; standards; labeling; prohibited acts.

(1) Any person authorized to compound shall compound in compliance with the standards of chapters 795 and 797 of The United States Pharmacopeia and The National Formulary, as such chapters existed on January 1, 2015, and shall compound (a) as the result of a practitioner's medical order or initiative occurring in the course of practice based upon the relationship between the practitioner, patient, and pharmacist, (b) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing, or (c) for office use only and not for resale.

(2) Compounding in a hospital pharmacy may occur for any hospital which is part of the same health care system under common ownership or which is a member of or an affiliated member of a formal network or partnership agreement.

(3)(a) Any authorized person may reconstitute a commercially available drug product in accordance with directions contained in approved labeling provided by the product's manufacturer and other manufacturer directions consistent with labeling.

(b) Any authorized person using beyond-use dating must follow the approved product manufacturer's labeling or the standards of The United States Pharmacopeia and The National Formulary if the product manufacturer's labeling does not specify beyond-use dating.

(c) Any authorized person engaged in activities listed in this subsection is not engaged in compounding, except that any variance from the approved product manufacturer's labeling will result in the person being engaged in compounding.

(4) Any authorized person splitting a scored tablet along scored lines or adding flavoring to a commercially available drug product is not engaged in compounding.

(5) No person shall compound:

(a) A drug that has been identified by the federal Food and Drug Administration as withdrawn or removed from the market because the drug was found to be unsafe or ineffective;

(b) A drug that is essentially a copy of an approved drug unless there is a drug shortage as determined by the board or unless a patient has an allergic reaction to the approved drug; or

(c) A drug that has been identified by the federal Food and Drug Administration or the board as a product which may not be compounded.

Source: Laws 2015, LB37, § 45.

Effective date August 30, 2015.

38-2867.02 Pharmacist in charge of hospital pharmacy; duties.

(1) Beginning January 1, 2017, the pharmacist in charge of a hospital pharmacy shall develop and implement policies and procedures to ensure that a pharmacist reviews all medical orders prior to the first dose being administered to a patient in the hospital. The policies and procedures may provide for either a pharmacist onsite or the use of telepharmacy to comply with this requirement.

(2) This section does not apply to the following situations:

(a) When the practitioner controls the ordering, dispensing, and administration of the drug, such as in the operating room, endoscopy suite, or emergency room; or

(b) When time does not permit the pharmacist's review, such as (i) a stat order meaning a medical order which indicates that the medication is to be given immediately and only once or (ii) when the clinical status of the patient would be significantly compromised by the delay resulting from the pharmacist's review of the order.

Source: Laws 2015, LB37, § 46.

Effective date August 30, 2015.

38-2869 Prospective drug utilization review; counseling; requirements.

(1)(a) Prior to the dispensing or the delivery of a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

(i) Therapeutic duplication;

(ii) Drug-disease contraindications;

(iii) Drug-drug interactions;

(iv) Incorrect drug dosage or duration of drug treatment;

(v) Drug-allergy interactions; and

(vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner and to record and maintain records of the following information to facilitate such review:

(i) The name, address, telephone number, date of birth, and gender of the patient;

(ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and

(iii) Any comments of the pharmacist relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards which are approved by the board.

(2)(a) Prior to the dispensing or delivery of a drug or device pursuant to a prescription, the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The refusal of the verbal offer to counsel must be documented. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the patient. Such elements may include, but need not be limited to, the following:

(i) The name and description of the prescribed drug or device;

(ii) The route of administration, dosage form, dose, and duration of therapy;

(iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;

(iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;

(v) Techniques for self-monitoring drug therapy;

(vi) Proper storage;

(vii) Prescription refill information; and

(viii) Action to be taken in the event of a missed dose.

(b) The patient counseling provided for in this subsection shall be provided in person whenever practical or by the utilization of telepharmacy which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.

(d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in this subsection but shall not be used as a substitute for such patient counseling.

(e) A verbal offer to counsel is not required when:

(i) The pharmacist, in his or her professional judgment, determines that patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her practitioner;

(ii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom prescription drugs or devices are administered;

(iii) A medical gas or a medical gas device is administered, dispensed, or distributed by a person described in subdivision (10) of section 38-2850; or

(iv) A device described in subsection (2) of section 38-2841 is sold, distributed, or delivered by a person described in subdivision (11) of section 38-2850.

Source: Laws 1993, LB 536, § 55; Laws 1998, LB 1073, § 63; Laws 2000, LB 819, § 92; Laws 2001, LB 398, § 45; Laws 2005, LB 382, § 8; R.S.Supp.,2006, § 71-1,147.35; Laws 2007, LB247, § 26; Laws

2007, LB463, § 965; Laws 2009, LB604, § 9; Laws 2010, LB849, § 12; Laws 2015, LB37, § 47.
Effective date August 30, 2015.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2870 Medical order; duration; dispensing; transmission.

(1) All medical orders shall be written, oral, or electronic and shall be valid for the period stated in the medical order, except that (a) if the medical order is for a controlled substance listed in section 28-405, such period shall not exceed six months from the date of issuance at which time the medical order shall expire and (b) if the medical order is for a drug or device which is not a controlled substance listed in section 28-405 or is an order issued by a practitioner for pharmaceutical care, such period shall not exceed twelve months from the date of issuance at which time the medical order shall expire.

(2) Prescription drugs or devices may only be dispensed by a pharmacist or pharmacist intern pursuant to a medical order, by an individual dispensing pursuant to a delegated dispensing permit, or as otherwise provided in section 38-2850. Notwithstanding any other provision of law to the contrary, a pharmacist or a pharmacist intern may dispense drugs or devices pursuant to a medical order or an individual dispensing pursuant to a delegated dispensing permit may dispense drugs or devices pursuant to a medical order. The Pharmacy Practice Act shall not be construed to require any pharmacist or pharmacist intern to dispense, compound, administer, or prepare for administration any drug or device pursuant to any medical order. A pharmacist or pharmacist intern shall retain the professional right to refuse to dispense.

(3) Except as otherwise provided in sections 28-414 and 28-414.01, a practitioner or the practitioner's agent may transmit a medical order to a pharmacist or pharmacist intern by the following means: (a) In writing, (b) orally, (c) by facsimile transmission of a written medical order or electronic transmission of a medical order signed by the practitioner, or (d) by facsimile transmission of a written medical order or electronic transmission of a medical order which is not signed by the practitioner. Such an unsigned medical order shall be verified with the practitioner.

(4)(a) Except as otherwise provided in sections 28-414 and 28-414.01, any medical order transmitted by facsimile or electronic transmission shall:

(i) Be transmitted by the practitioner or the practitioner's agent directly to a pharmacist or pharmacist intern in a licensed pharmacy of the patient's choice. No intervening person shall be permitted access to the medical order to alter such order or the licensed pharmacy chosen by the patient. Such medical order may be transmitted through a third-party intermediary who shall facilitate the transmission of the order from the practitioner or practitioner's agent to the pharmacy;

(ii) Identify the transmitter's telephone number or other suitable information necessary to contact the transmitter for written or oral confirmation, the time and date of the transmission, the identity of the pharmacy intended to receive the transmission, and other information as required by law; and

(iii) Serve as the original medical order if all other requirements of this subsection are satisfied.

(b) Medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature for legend drugs which are not controlled substances or a digital signature for legend drugs which are controlled substances.

(5) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

Source: Laws 2001, LB 398, § 35; Laws 2005, LB 382, § 7; R.S.Supp.,2006, § 71-1,146.01; Laws 2007, LB463, § 966; Laws 2014, LB811, § 26; Laws 2015, LB37, § 48.
Effective date August 30, 2015.

38-2884 Delegated dispensing permit; public health clinic; dispensing requirements.

Under a delegated dispensing permit for a public health clinic, approved formulary drugs and devices may be dispensed by a public health clinic worker or a health care professional licensed in Nebraska to practice medicine and surgery or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant without the onsite services of a pharmacist if:

(1) The initial dispensing of all prescriptions for approved formulary drugs and devices is conducted by a health care professional licensed in Nebraska to practice medicine and surgery or pharmacy or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant;

(2) The drug or device is dispensed pursuant to a prescription written onsite by a practitioner;

(3) The only prescriptions to be refilled under the delegated dispensing permit are prescriptions for contraceptives;

(4) Prescriptions are accompanied by patient instructions and written information approved by the director;

(5) The dispensing of authorized refills of contraceptives is done by a licensed health care professional listed in subdivision (1) of this section or by a public health clinic worker;

(6) All drugs or devices are prepackaged by the manufacturer or at a public health clinic by a pharmacist into the quantity to be prescribed and dispensed at the public health clinic;

(7) All drugs and devices stored, received, or dispensed under the authority of public health clinics are properly labeled at all times. For purposes of this subdivision, properly labeled means that the label affixed to the container prior to dispensing contains the following information:

(a) The name of the manufacturer;

(b) The lot number and expiration date from the manufacturer or, if repackaged by a pharmacist, the lot number and calculated expiration date;

(c) Directions for patient use;

(d) The quantity of drug in the container;

(e) The name, strength, and dosage form of the drug; and

(f) Auxiliary labels as needed for proper adherence to any prescription;

(8) The following additional information is added to the label of each container when the drug or device is dispensed:

- (a) The patient's name;
- (b) The name of the prescribing health care professional;
- (c) The prescription number;
- (d) The date dispensed; and
- (e) The name and address of the public health clinic;

(9) The only drugs and devices allowed to be dispensed or stored by public health clinics appear on the formulary approved pursuant to section 38-2881; and

(10) At any time that dispensing is occurring from a public health clinic, the delegating pharmacist for the public health clinic or on-call pharmacist in Nebraska is available, either in person or by telephone, to answer questions from clients, staff, public health clinic workers, or volunteers. This availability shall be confirmed and documented at the beginning of each day that dispensing will occur. The delegating pharmacist or on-call pharmacist shall inform the public health clinic if he or she will not be available during the time that his or her availability is required. If a pharmacist is unavailable, no dispensing shall occur.

Source: Laws 1994, LB 900, § 23; Laws 1996, LB 1044, § 468; Laws 1996, LB 1108, § 18; Laws 1998, LB 1073, § 76; Laws 2001, LB 398, § 59; Laws 2002, LB 1062, § 34; R.S.1943, (2003), § 71-1,147.53; Laws 2007, LB296, § 353; Laws 2007, LB463, § 980; Laws 2015, LB37, § 49.
Effective date August 30, 2015.

38-2887 Delegated dispensing permit; worker; proficiency demonstration; supervision; liability.

(1) A public health clinic worker or dialysis drug or device distributor worker shall demonstrate proficiency to the delegating pharmacist, according to the standards approved by the board. The delegating pharmacist shall document proficiency for each worker. In addition, a public health clinic worker shall be supervised by a licensed health care professional specified in subdivision (1) of section 38-2884 for the first month that such worker is dispensing refills of contraceptives.

(2) Following initial training and proficiency demonstration, the public health clinic worker or dialysis drug or device distributor worker shall demonstrate continued proficiency at least annually. A dialysis drug or device distributor worker shall attend annual training programs taught by a pharmacist. Documentation of such training shall be maintained in the worker's employee file.

(3) The public health clinic or dialysis drug or device distributor for which a public health clinic worker or dialysis drug or device distributor worker is working shall be liable for acts or omissions on the part of such worker.

Source: Laws 1994, LB 900, § 26; Laws 1996, LB 1108, § 19; Laws 1998, LB 1073, § 79; Laws 2001, LB 398, § 61; R.S.1943, (2003), § 71-1,147.56; Laws 2007, LB463, § 983; Laws 2015, LB37, § 50.
Effective date August 30, 2015.

38-2890 Pharmacy technicians; registration; requirements; certification.

(1) All pharmacy technicians employed by a facility licensed under the Health Care Facility Licensure Act shall be registered with the Pharmacy Technician Registry created in section 38-2893.

(2) To register as a pharmacy technician, an individual shall (a) be at least eighteen years of age, (b) be a high school graduate or be officially recognized by the State Department of Education as possessing the equivalent degree of education, (c) have never been convicted of any nonalcohol, drug-related misdemeanor or felony, (d) file an application with the department, and (e) pay the applicable fee.

(3) Beginning January 1, 2017, a pharmacy technician shall be certified by a state or national certifying body approved by the board in order to be employed as a pharmacy technician in a health care facility.

Source: Laws 2007, LB236, § 31; R.S.Supp.,2007, § 71-1,147.65; Laws 2015, LB37, § 51.

Effective date August 30, 2015.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2892 Pharmacy technicians; responsibility for supervision and performance.

(1) The pharmacist in charge of a pharmacy or hospital pharmacy employing pharmacy technicians shall be responsible for the supervision and performance of the pharmacy technicians.

(2) The pharmacist in charge shall be responsible for the practice of pharmacy and the onsite training, functions, supervision, and verification of the performance of pharmacy technicians. Except as otherwise provided in the Automated Medication Systems Act, the supervision of pharmacy technicians at a pharmacy shall be performed by the pharmacist who is on duty in the facility with the pharmacy technicians or located in pharmacies that utilize a real-time, online data base and have a pharmacist in all pharmacies. The supervision of pharmacy technicians at a hospital pharmacy shall be performed by the pharmacist assigned by the pharmacist in charge to be responsible for the supervision and verification of the activities of the pharmacy technicians.

Source: Laws 2007, LB236, § 33; R.S.Supp.,2007, § 71-1,147.67; Laws 2015, LB37, § 52.

Effective date August 30, 2015.

Cross References

Automated Medication Systems Act, see section 71-2444.

38-2895 Pharmacy technician; discipline against supervising pharmacist; enforcement orders.

(1) If a pharmacy technician performs functions requiring professional judgment and licensure as a pharmacist or performs functions without supervision and verification and such acts are known to the pharmacist supervising the pharmacy technician or the pharmacist in charge or are of such a nature that they should have been known to a reasonable person, such acts may be considered acts of unprofessional conduct on the part of the pharmacist

supervising the pharmacy technician or the pharmacist in charge pursuant to section 38-178, and disciplinary measures may be taken against such pharmacist supervising the pharmacy technician or the pharmacist in charge pursuant to the Uniform Credentialing Act.

(2) Acts described in subsection (1) of this section may be grounds for the department, with the recommendation of the board, to apply to the district court in the judicial district in which the pharmacy is located for an order to cease and desist from the performance of any unauthorized acts. On or at any time after such application the court may, in its discretion, issue an order restraining such pharmacy or its agents or employees from the performance of unauthorized acts. After a hearing the court shall either grant or deny the application. Such order shall continue until the court, after a hearing, finds the basis for such order has been removed.

Source: Laws 2007, LB236, § 36; R.S.Supp.,2007, § 71-1,147.70; Laws 2007, LB247, § 84; Laws 2015, LB37, § 53.
Effective date August 30, 2015.

38-2899 Rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations as deemed necessary to implement the Mail Service Pharmacy Licensure Act, the Pharmacy Practice Act, and the Uniform Controlled Substances Act. The minimum standards and requirements for the practice of pharmacy, including dispensing pursuant to a delegated dispensing permit, shall be consistent with the minimum standards and requirements established by the department for pharmacy licenses under the Health Care Facility Licensure Act.

Source: Laws 2001, LB 398, § 27; Laws 2003, LB 667, § 4; Laws 2005, LB 538, § 20; R.S.Supp.,2006, § 71-1,148; Laws 2007, LB463, § 989; Laws 2015, LB37, § 54.
Effective date August 30, 2015.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Mail Service Pharmacy Licensure Act, see section 71-2406.

Uniform Controlled Substances Act, see section 28-401.01.

38-28,104 Prescription; contents.

A prescription for a legend drug which is not a controlled substance must contain the following information prior to being filled by a pharmacist or a practitioner who holds a pharmacy license under subdivision (1) of section 38-2850: Patient's name; name of the drug, device, or biological; strength of the drug or biological, if applicable; dosage form of the drug or biological; quantity of drug, device, or biological prescribed; number of authorized refills; directions for use; date of issuance; prescribing practitioner's name; and if the prescription is written, prescribing practitioner's signature. Prescriptions for controlled substances must meet the requirements of sections 28-414 and 28-414.01.

Source: Laws 2015, LB37, § 55.
Effective date August 30, 2015.

38-28,105 Chart order; contents.

A chart order must contain the following information: Patient's name; date of the order; name of the drug, device, or biological; strength of the drug or biological, if applicable; directions for administration to the patient, including the dose to be given; and prescribing practitioner's name.

Source: Laws 2015, LB37, § 56.

Effective date August 30, 2015.

38-28,106 Communication of prescription, chart order, or refill authorization; limitation.

An employee or agent of a prescribing practitioner may communicate a prescription, chart order, or refill authorization issued by the prescribing practitioner to a pharmacist or a pharmacist intern except for an emergency oral authorization for a controlled substance listed in Schedule II of section 28-405.

Source: Laws 2015, LB37, § 57.

Effective date August 30, 2015.

38-28,107 Collection or return of dispensed drugs and devices; conditions; fee; liability; professional disciplinary action.

(1) To protect the public safety, dispensed drugs or devices:

(a) May be collected in a pharmacy for disposal;

(b) May be returned to a pharmacy in response to a recall by the manufacturer, packager, or distributor or if a device is defective or malfunctioning;

(c) Shall not be returned to saleable inventory nor made available for subsequent relabeling and redispensing, except as provided in subdivision (1)(d) of this section; or

(d) May be returned from a long-term care facility to the pharmacy from which they were dispensed for credit or for relabeling and redispensing, except that:

(i) No controlled substance may be returned;

(ii) No prescription drug or medical device that has restricted distribution by the federal Food and Drug Administration may be returned;

(iii) The decision to accept the return of the dispensed drug or device shall rest solely with the pharmacist;

(iv) The dispensed drug or device shall have been in the control of the long-term care facility at all times;

(v) The dispensed drug or device shall be in the original and unopened labeled container with a tamper-evident seal intact, as dispensed by the pharmacist. Such container shall bear the expiration date or calculated expiration date and lot number; and

(vi) Tablets or capsules shall have been dispensed in a unit dose container which is impermeable to moisture and approved by the board.

(2) Pharmacies may charge a fee for collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing.

(3) Any person or entity which exercises reasonable care in collecting dispensed drugs or devices for disposal or from a long-term care facility for

credit or for relabeling and redispensing pursuant to this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(4) A drug manufacturer which exercises reasonable care shall be immune from civil or criminal liability for any injury, death, or loss to persons or property relating to the relabeling and redispensing of drugs returned from a long-term care facility.

(5) Notwithstanding subsection (4) of this section, the relabeling and redispensing of drugs returned from a long-term care facility does not absolve a drug manufacturer of any criminal or civil liability that would have existed but for the relabeling and redispensing and such relabeling and redispensing does not increase the liability of such drug manufacturer that would have existed but for the relabeling and redispensing.

Source: Laws 1999, LB 333, § 1; Laws 2001, LB 398, § 74; Laws 2002, LB 1062, § 53; Laws 2007, LB247, § 51; Laws 2007, LB463, § 1199; Laws 2011, LB274, § 1; R.S.Supp.,2014, § 71-2421; Laws 2015, LB37, § 58.
Effective date August 30, 2015.

38-28,108 Nebraska Drug Product Selection Act; act, how cited.

Sections 38-28,108 to 38-28,116 shall be known and may be cited as the Nebraska Drug Product Selection Act.

Source: Laws 1977, LB 103, § 8; R.S.1943, (1996), § 71-5408; Laws 2003, LB 667, § 13; R.S.1943, (2009), § 71-5401.01; Laws 2015, LB37, § 59.
Effective date August 30, 2015.

38-28,109 Drug product selection; purposes of act.

The purposes of the Nebraska Drug Product Selection Act are to provide for the drug product selection of equivalent drug products and to promote the greatest possible use of such products.

Source: Laws 2003, LB 667, § 14; R.S.1943, (2009), § 71-5401.02; Laws 2015, LB37, § 60.
Effective date August 30, 2015.

38-28,110 Drug product selection; terms, defined.

For purposes of the Nebraska Drug Product Selection Act, unless the context otherwise requires:

(1) Bioequivalent means drug products: (a) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (b) that are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (c) that comply with compendial standards and are consistent from lot to lot with respect to (i) purity of ingredients, (ii) weight variation, (iii) uniformity of content, and (iv) stability; and (d) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist;

(2) Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug product and placed upon the labeling of such product at the time of packaging;

(3) Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards;

(4) Drug product means any drug or device as defined in section 38-2841;

(5) Drug product select means to dispense, without the practitioner's express authorization, an equivalent drug product in place of the brand-name drug product contained in a medical order of such practitioner;

(6) Equivalent means drug products that are both chemically equivalent and bioequivalent; and

(7) Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names Council and accepted by the federal Food and Drug Administration of those drug products having the same active chemical ingredients in the same strength and quantity.

Source: Laws 1977, LB 103, § 2; Laws 1983, LB 476, § 21; Laws 1989, LB 342, § 36; Laws 1996, LB 1044, § 720; Laws 1998, LB 1073, § 148; Laws 2001, LB 398, § 76; Laws 2003, LB 667, § 15; Laws 2005, LB 382, § 11; Laws 2007, LB296, § 622; Laws 2007, LB463, § 1232; R.S.1943, (2009), § 71-5402; Laws 2015, LB37, § 61.

Effective date August 30, 2015.

38-28,111 Drug product selection; when.

(1) A pharmacist may drug product select except when:

(a) A practitioner designates that drug product selection is not permitted by specifying in the written, oral, or electronic prescription that there shall be no drug product selection. For written or electronic prescriptions, the practitioner shall specify "no drug product selection", "dispense as written", "brand medically necessary", or "no generic substitution" or the notation "N.D.P.S.", "D.A.W.", or "B.M.N." or words or notations of similar import to indicate that drug product selection is not permitted. The pharmacist shall note "N.D.P.S.", "D.A.W.", "B.M.N.", "no drug product selection", "dispense as written", "brand medically necessary", "no generic substitution", or words or notations of similar import on the prescription to indicate that drug product selection is not permitted if such is communicated orally by the prescribing practitioner; or

(b) A patient or designated representative or caregiver of such patient instructs otherwise.

(2) A pharmacist shall not drug product select a drug product unless:

(a) The drug product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The drug product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager of the drug product provides reasonable services, as determined by the board, to accept the return of drug products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains procedures for the recall of unsafe or defective drug products.

Source: Laws 1977, LB 103, § 3; Laws 1978, LB 689, § 2; Laws 1983, LB 476, § 22; Laws 1989, LB 353, § 1; Laws 1991, LB 363, § 1; Laws 1998, LB 1073, § 149; Laws 1999, LB 828, § 174; Laws 2003, LB 667, § 16; Laws 2005, LB 382, § 12; Laws 2007, LB247, § 54; Laws 2009, LB195, § 83; R.S.1943, (2009), § 71-5403; Laws 2015, LB37, § 62.
Effective date August 30, 2015.

38-28,112 Pharmacist; drug product selection; effect on reimbursement; label; price.

(1) Whenever a drug product has been prescribed with the notation that no drug product selection is permitted for a patient who has a contract whereunder he or she is reimbursed for the cost of health care, directly or indirectly, the party that has contracted to reimburse the patient, directly or indirectly, shall make reimbursements on the basis of the price of the brand-name drug product and not on the basis of the equivalent drug product, unless the contract specifically requires generic reimbursement under the Code of Federal Regulations.

(2) A prescription drug or device when dispensed shall bear upon the label the name of the drug or device in the container unless the practitioner writes do not label or words of similar import in the prescription or so designates orally.

(3) Nothing in this section shall (a) require a pharmacy to charge less than its established minimum price for the filling of any prescription or (b) prohibit any hospital from developing, using, and enforcing a formulary.

Source: Laws 1977, LB 103, § 4; Laws 1983, LB 476, § 23; Laws 1996, LB 1044, § 721; Laws 1998, LB 1073, § 150; Laws 2003, LB 667, § 17; Laws 2005, LB 382, § 13; R.S.1943, (2009), § 71-5404; Laws 2015, LB37, § 63.
Effective date August 30, 2015.

38-28,113 Drug product selection; pharmacist; practitioner; negligence; what constitutes.

(1) The drug product selection of any drug product by a pharmacist pursuant to the Nebraska Drug Product Selection Act shall not constitute the practice of medicine.

(2) Drug product selection of drug products by a pharmacist pursuant to the act or any rules and regulations adopted and promulgated under the act shall not constitute evidence of negligence if the drug product selection was made within the reasonable and prudent practice of pharmacy.

(3) When drug product selection by a pharmacist is permissible under the act, such drug product selection shall not constitute evidence of negligence on the part of the prescribing practitioner. The failure of a prescribing practitioner to provide that there shall be no drug product selection in any case shall not

constitute evidence of negligence or malpractice on the part of such prescribing practitioner.

Source: Laws 1977, LB 103, § 5; Laws 2001, LB 398, § 77; Laws 2003, LB 667, § 18; R.S.1943, (2009), § 71-5405; Laws 2015, LB37, § 64.

Effective date August 30, 2015.

38-28,114 Drug; labeling; contents; violation; embargo; effect.

(1) The manufacturer, packager, or distributor of any legend drug sold, delivered, or offered for sale for human use in the State of Nebraska shall have the name and address of the manufacturer of the finished dosage form of the drug printed on the label on the container of such drug.

(2) Whenever a duly authorized agent of the department has probable cause to believe that any drug is without such labeling, the agent shall embargo such drug and shall affix an appropriate marking thereto. Such marking shall contain (a) adequate notice that the drug (i) is or is suspected of being sold, delivered, or offered for sale in violation of the Nebraska Drug Product Selection Act and (ii) has been embargoed and (b) a warning that it is unlawful for any person to remove or dispose of the embargoed drug by sale or otherwise without the permission of the agent or a court of competent jurisdiction.

Source: Laws 1977, LB 103, § 6; Laws 2001, LB 398, § 78; Laws 2003, LB 667, § 19; R.S.1943, (2009), § 71-5406; Laws 2015, LB37, § 65.

Effective date August 30, 2015.

38-28,115 Drug product selection; violations; penalty.

(1) In addition to any other penalties provided by law, any person who violates any provision of the Nebraska Drug Product Selection Act or any rule or regulation adopted and promulgated under the act is guilty of a Class IV misdemeanor for each violation.

(2) It is unlawful for any employer or such employer's agent to coerce a pharmacist to dispense a drug product against the professional judgment of the pharmacist or as ordered by a prescribing practitioner.

Source: Laws 1977, LB 103, § 7; Laws 1983, LB 476, § 24; Laws 1988, LB 1100, § 169; Laws 2001, LB 398, § 79; Laws 2003, LB 667, § 20; R.S.1943, (2009), § 71-5407; Laws 2015, LB37, § 66.

Effective date August 30, 2015.

38-28,116 Drug product selection; rules and regulations.

The department may adopt and promulgate rules and regulations necessary to implement the Nebraska Drug Product Selection Act upon the joint recommendation of the Board of Medicine and Surgery and the Board of Pharmacy.

Source: Laws 2003, LB 667, § 21; R.S.1943, (2009), § 71-5409; Laws 2015, LB37, § 67.

Effective date August 30, 2015.

CHAPTER 39 HIGHWAYS AND BRIDGES

Article.

1. General Highway Provisions. 39-101.
13. State Highways.
 - (c) Designation of System. 39-1311.02.
 - (h) Contracts. 39-1348 to 39-1353.
 - (l) State Recreation Roads. 39-1390.
16. County Roads. Road Improvement Districts.
 - (a) Special Improvement Districts. 39-1622 to 39-1636.01.

ARTICLE 1

GENERAL HIGHWAY PROVISIONS

Section

39-101. Terms, defined.

39-101 Terms, defined.

For purposes of Chapter 39, unless the context otherwise requires:

(1) Alley means a highway intended to provide access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic;

(2) Divided highway means a highway with separated roadways for traffic in opposite directions;

(3) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(4) Intersection means the area embraced within the prolongation or connection of the lateral curb lines or, if there are no lateral curb lines, the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. When a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection. The junction of an alley with a highway shall not constitute an intersection;

(5) Mail means to deposit in the United States mail properly addressed and with postage prepaid;

(6) Maintenance means the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any highway, including surface, shoulders, roadsides, traffic control devices, structures, waterways, and drainage facilities, for the purpose of keeping it at or near or improving upon its original standard of usefulness and safety;

(7) Motor vehicle means every self-propelled land vehicle, not operated upon rails, except mopeds as defined in section 60-637, self-propelled chairs used by persons who are disabled, electric personal assistive mobility devices as defined in section 60-618.02, and bicycles as defined in section 60-611;

(8) Park or parking means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers;

(9) Pedestrian means any person afoot;

(10) Right-of-way means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other;

(11) Roadway means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, the term roadway refers to any such roadway separately but not to all such roadways collectively;

(12) Shoulder means that part of the highway contiguous to the roadway and designed for the accommodation of stopped vehicles, for emergency use, and for lateral support of the base and surface courses of the roadway;

(13) Sidewalk means that portion of a highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians;

(14) Traffic means pedestrians, ridden or herded animals, and vehicles and other conveyances either singly or together while using any highway for purposes of travel; and

(15) Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved solely by human power, devices used exclusively upon stationary rails or tracks, electric personal assistive mobility devices as defined in section 60-618.02, and bicycles as defined in section 60-611.

Source: Laws 1993, LB 370, § 16; Laws 2002, LB 1105, § 436; Laws 2015, LB95, § 2.
Effective date August 30, 2015.

**ARTICLE 13
STATE HIGHWAYS**

(c) DESIGNATION OF SYSTEM

Section

39-1311.02. Corridor; review of preliminary subdivision plat; building permit; required.

(h) CONTRACTS

39-1348. Construction; plans and specifications; advertisement for bids; failure of publication; effect; powers of department.

39-1349. Construction contracts; letting; procedure; interest on retained payments; predetermined minimum wages; powers of department.

39-1350. Bids; contracts; department powers; department authorized to act for political subdivision.

39-1351. Construction contracts; bidders; qualifications; evaluation by Department of Roads; powers of department.

- Section
 39-1352. Construction contracts; bidders; statement of qualifications; financial showing; certification by public accountant.
 39-1353. Construction contracts; proposal forms; issuance to certain bidders.
 (l) STATE RECREATION ROADS
 39-1390. State Recreation Road Fund; created; use; preferences; maintenance; investment.

(c) DESIGNATION OF SYSTEM

39-1311.02 Corridor; review of preliminary subdivision plat; building permit; required.

(1) A review of a preliminary subdivision plat shall be required for all proposals to subdivide land or to make public or private improvements on all land within an approved corridor.

(2) A building permit shall be required for all structures within an approved corridor if the actual cost of the structure exceeds one thousand dollars. Structures include, but are not limited to, any construction or improvement to land such as public or private streets, sidewalks, and utilities; golf course tee boxes, fairways, or greens; drainage facilities; storm water detention areas; mitigation sites; green space; landscaped areas; or other similar uses. Any application for a building permit shall include a plat drawn by a person licensed as a professional engineer or architect under the Engineers and Architects Regulation Act or registered as a land surveyor as provided in the Land Surveyors Regulation Act showing the location of all existing and proposed structures in the area subject to corridor protection.

Source: Laws 1974, LB 805, § 3; Laws 2003, LB 187, § 9; Laws 2015, LB138, § 4.
 Effective date August 30, 2015.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

Land Surveyors Regulation Act, see section 81-8,108.01.

(h) CONTRACTS

39-1348 Construction; plans and specifications; advertisement for bids; failure of publication; effect; powers of department.

Before letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, the department shall solicit bids as follows:

(1) For contracts with an estimated cost, as determined by the department, of greater than one hundred thousand dollars, the department shall advertise for sealed bids for not less than twenty days by publication of a notice thereof once a week for three consecutive weeks in the official county newspaper designated by the county board in the county where the work is to be done and in such additional newspaper or newspapers as may appear necessary to the department in order to give notice of the receiving of bids. Such advertisement shall state the place where the plans and specifications for the work may be inspected and shall designate the time when the bids shall be filed and opened. If through no fault of the department publication of such notice fails to appear in any newspaper or newspapers in the manner provided in this subdivision,

the department shall be deemed to have fulfilled the requirements of this subdivision; and

(2) For contracts with an estimated cost, as determined by the department, of one hundred thousand dollars or less, the department, in its sole discretion, shall either:

(a) Follow the procedures given in subdivision (1) of this section; or

(b) Request bids from at least three potential bidders for such work. If the department requests bids under this subdivision, it shall designate a time when the bids shall be opened. The department may award a contract pursuant to this subdivision if it receives at least one responsive bid.

Source: Laws 1955, c. 148, § 48, p. 439; Laws 1961, c. 181, § 8, p. 541; Laws 2015, LB312, § 1.
Effective date August 30, 2015.

39-1349 Construction contracts; letting; procedure; interest on retained payments; predetermined minimum wages; powers of department.

(1) Except as provided in subsections (3) and (4) of this section, all contracts for the construction, reconstruction, improvement, maintenance, or repair of state highway system roads and bridges and their appurtenances shall be let by the department to the lowest responsible bidder. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351. The department may reject any or all bids and cause the work to be done as may be directed by the department. If the contractor has furnished the department all required records and reports, the department shall pay to the contractor interest at a rate three percentage points above the average annual Federal Reserve composite prime lending rate for the previous calendar year rounded to the nearest one-tenth of one percent on the amount retained and on the final payment due the contractor beginning sixty days after the work under the contract has been completed as evidenced by the completion date established in the department's letter of tentative acceptance or, when tentative acceptance has not been issued, beginning sixty days after completion of the work and running until the date when payment is tendered to the contractor.

(2) When the department is required by acts of Congress and rules and regulations made by an agent of the United States in pursuance of such acts to predetermine minimum wages to be paid laborers and mechanics employed on highway construction, the Director-State Engineer shall cause minimum rates of wages for such laborers and mechanics to be predetermined and set forth in contracts for such construction. The minimum rates shall be the scale of wages which the Director-State Engineer finds are paid and maintained by at least fifty percent of the contractors in performing highway work contracted with the department unless the Director-State Engineer further finds that such scale of wages so determined would unnecessarily increase the cost of such highway work to the state, in which event he or she shall reduce such determination to such scale of wages as he or she finds is required to avoid such unnecessary increase in the cost of such highway work.

(3) The department, in its sole discretion, may permit a city or county to let state or federally funded contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances located within the jurisdictional boundaries of such city or county, to

the lowest responsible bidder when the work to be let is primarily local in nature and the department determines that it is in the public interest that the contract be let by the city or the county. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

(4) The department, in its sole discretion, may permit a federal agency to let contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances and may permit such federal agency to perform any and all other aspects of the project to which such contract relates, including, but not limited to, preliminary engineering, environmental clearance, final design, and construction engineering, when the department determines that it is in the public interest to do so. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 49, p. 439; Laws 1959, c. 177, § 1, p. 648; Laws 1961, c. 197, § 1, p. 599; Laws 1967, c. 240, § 1, p. 640; Laws 1969, c. 332, § 1, p. 1188; Laws 1980, LB 279, § 3; Laws 1993, LB 539, § 1; Laws 2002, LB 491, § 1; Laws 2015, LB312, § 2.

Effective date August 30, 2015.

39-1350 Bids; contracts; department powers; department authorized to act for political subdivision.

The department shall have the authority to act for any political or governmental subdivision or public corporation of this state for the purpose of taking bids or letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances. The department, while so acting, may take such bids and let such contracts at the offices of the Department of Roads, Lincoln, Nebraska, or at such other location as designated by the department if the department has the written consent of the political or governmental subdivision or public corporation where the work is to be done.

Source: Laws 1955, c. 148, § 50, p. 439; Laws 1969, c. 333, § 1, p. 1189; Laws 2015, LB312, § 3.

Effective date August 30, 2015.

39-1351 Construction contracts; bidders; qualifications; evaluation by Department of Roads; powers of department.

(1) Except as provided in subsection (2) of this section, any person desiring to submit to the department a bid for the performance of any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, which the department proposes to let, shall apply to the department for prequalification not later than ten days before the letting of the contract. The department shall determine the extent of any applicant's qualifications by a full and appropriate evaluation of the applicant's experience, equipment, financial resources, and performance record. In determining the qualification of persons to bid on any particular contract, the department shall consider the equipment and resources available for the particular contract contemplated.

(2) The department may, in its sole discretion, grant an exemption from all prequalification requirements for (a) any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances if the estimate of the department for such work is one hundred thousand dollars or less or (b) any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances if such work is of an emergency nature.

Source: Laws 1955, c. 148, § 51, p. 439; Laws 1973, LB 491, § 6; Laws 2015, LB312, § 4.
Effective date August 30, 2015.

39-1352 Construction contracts; bidders; statement of qualifications; financial showing; certification by public accountant.

(1) Except as provided in subsection (2) of this section, any person proposing to bid on a contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall submit to the department, at such times as it may require, a statement showing such person's qualifications. Such statement shall be under oath and on a standard form to be prepared and supplied by the department. The financial showing required in the statement shall be certified by a certified public accountant or by a public accountant holding a currently valid permit from the Nebraska State Board of Public Accountancy. The statement shall be confidential and only for the use of the department.

(2) Subsection (1) of this section shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 52, p. 440; Laws 1961, c. 198, § 1, p. 601; Laws 2015, LB312, § 5.
Effective date August 30, 2015.

39-1353 Construction contracts; proposal forms; issuance to certain bidders.

(1) Proposal forms for submitting bids on any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall be issued by the department at the offices of the Department of Roads, Lincoln, Nebraska, or at such other location as designated by the department not later than 5 p.m. of the day before the letting of the contract.

(2) Such proposal forms shall be issued only to those persons previously qualified by the department and bids shall be accepted only from such qualified persons. This subsection shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 53, p. 440; Laws 1969, c. 333, § 2, p. 1189; Laws 1995, LB 447, § 1; Laws 2015, LB312, § 6.
Effective date August 30, 2015.

(I) STATE RECREATION ROADS

39-1390 State Recreation Road Fund; created; use; preferences; maintenance; investment.

The State Recreation Road Fund is created. The money in the fund shall be transferred by the State Treasurer, on the first day of each month, to the Department of Roads and shall be expended by the Director-State Engineer with the approval of the Governor for construction and maintenance of dustless-surface roads to be designated as state recreation roads as in this section, except that (1) transfers may be made from the fund to the State Park Cash Revolving Fund at the direction of the Legislature through July 31, 2016, and (2) if the balance in the State Recreation Road Fund exceeds fourteen million dollars on the first day of each month, the State Treasurer shall transfer the amount greater than fourteen million dollars to the Game and Parks State Park Improvement and Maintenance Fund. Except as to roads under contract as of March 15, 1972, those roads, excluding state highways, giving direct and immediate access to or located within state parks, state recreation areas, or other recreational or historical areas, shall be eligible for designation as state recreation roads. Such eligibility shall be determined by the Game and Parks Commission and certified to the Director-State Engineer, who shall, after receiving such certification, be authorized to commence construction on such recreation roads as funds are available. In addition, those roads, excluding state highways, giving direct and immediate access to a state veteran cemetery are state recreation roads. After construction of such roads they shall be shown on the map provided by section 39-1311. Preference in construction shall be based on existing or potential traffic use by other than local residents. Unless the State Highway Commission otherwise recommends, such roads upon completion of construction shall be incorporated into the state highway system. If such a road is not incorporated into the state highway system, the Department of Roads and the county within which such road is located shall enter into a maintenance agreement establishing the responsibility for maintenance of the road, the maintenance standards to be met, and the responsibility for maintenance costs. Any money in the State Recreation Road Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1963, c. 348, § 2, p. 1119; Laws 1965, c. 225, § 1, p. 649; Laws 1965, c. 501, § 1, p. 1595; Laws 1969, c. 584, § 42, p. 2369; Laws 1972, LB 1131, § 1; Laws 1995, LB 7, § 36; Laws 2003, LB 408, § 1; Laws 2009, First Spec. Sess., LB3, § 20; Laws 2010, LB749, § 1; Laws 2014, LB906, § 15; Laws 2015, LB661, § 30. Effective date May 21, 2015.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 16

COUNTY ROADS. ROAD IMPROVEMENT DISTRICTS

(a) SPECIAL IMPROVEMENT DISTRICTS

Section

- 39-1622. Special assessments; special benefits; general benefits; levy; lien.
 39-1623. Improvements; plat; benefits; schedule of proposed special assessments; notice; hearing.
 39-1636.01. Road lighting system; petition; special assessment; limitation.

(a) SPECIAL IMPROVEMENT DISTRICTS

39-1622 Special assessments; special benefits; general benefits; levy; lien.

The board of trustees of the road improvement district shall, in addition to its other powers, levy a special assessment to the extent of special benefits conferred the cost of such portion of such improvements as are local improvements upon property found specially benefited thereby which shall be a lien as provided by section 39-1614 when properly levied and certified as required by sections 39-1601 to 39-1636. The board of trustees of such district may find the remainder of the cost of such improvements made are of general benefit to the district and the costs thereof shall be paid from taxes levied against all the property in the district in the manner provided for by subsection (1) of section 39-1621.

Source: Laws 1957, c. 155, art. III, § 22, p. 534; Laws 1959, c. 182, § 1, p. 663; Laws 2015, LB361, § 54.
Effective date August 30, 2015.

39-1623 Improvements; plat; benefits; schedule of proposed special assessments; notice; hearing.

After the completion of any improvements, the engineer shall file with the clerk of the district a complete statement of all the costs of such improvement, a plat of the property in the district specially benefited thereby, and a schedule of the amount proposed to be assessed against each separate piece of property as a special assessment. A copy of the plat and a schedule of the proposed special assessment shall be filed in the office of the county clerk of the county in which the greater portion of the area of the district is located for public inspection. The trustees of the district shall then order the clerk of the district to give notice that the plat and schedule are on file with the county clerk where the plat and schedule are kept for examination, and that all objections thereto or to prior proceedings on account of errors, irregularities, or inequalities not made in writing and filed with the clerk of the district within twenty days after first publication of the notice shall be deemed to have been waived. Such notice shall be given by publication, once each week during two consecutive weeks, in a newspaper of general circulation in the district and whenever possible by giving notice in writing by either registered or certified mail to the owner of each separate piece of property against which a special assessment is proposed. The notice shall state the time and place where objections are to be filed. The time of such hearing shall be determined in the manner stated in section 39-1624. Any objections so filed shall be considered by the trustees of the district.

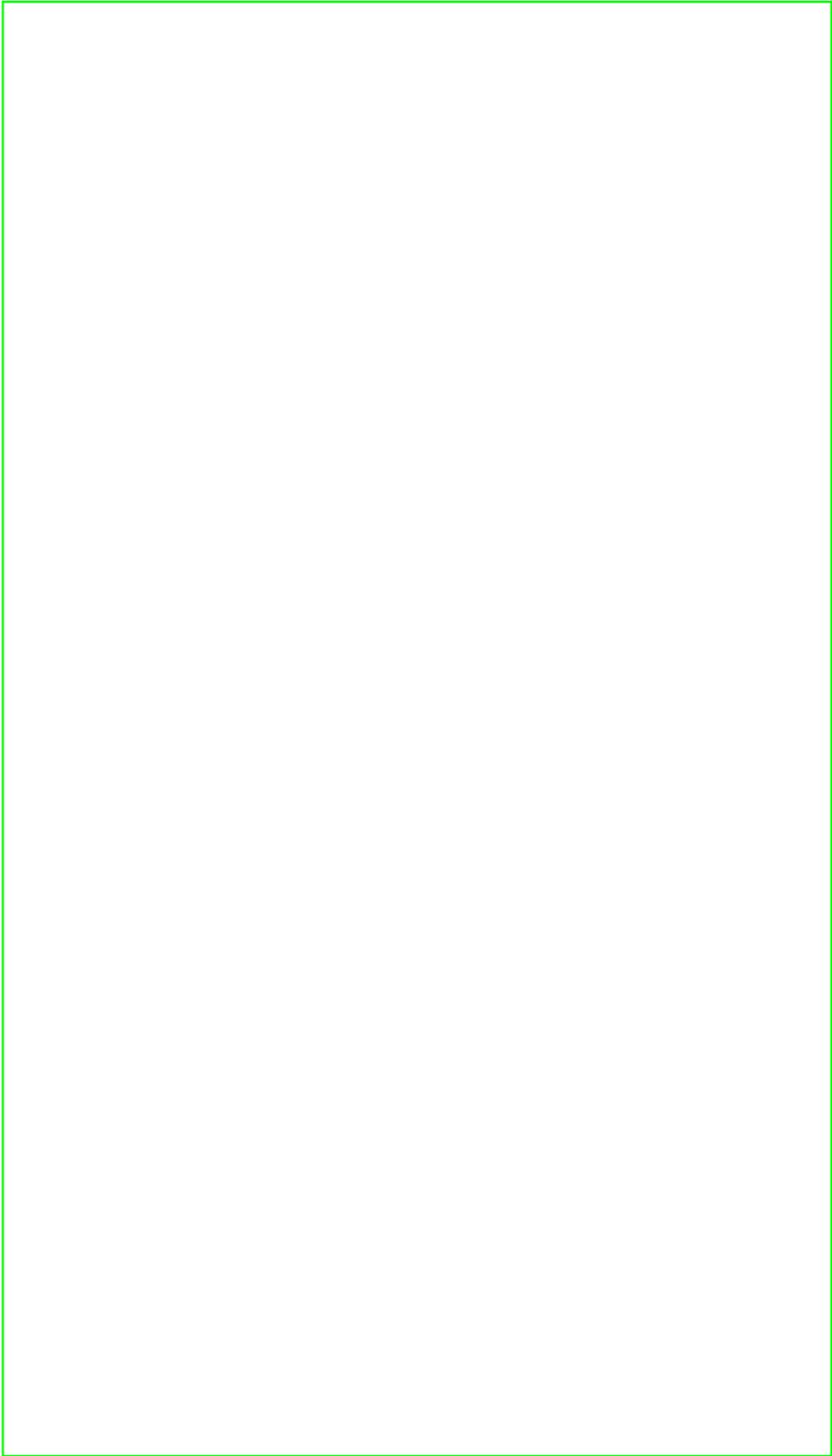
Source: Laws 1957, c. 155, art. III, § 23, p. 534; Laws 2015, LB361, § 55.
Effective date August 30, 2015.

39-1636.01 Road lighting system; petition; special assessment; limitation.

If a petition signed by sixty percent of the electors of any district is filed with the county clerk of the county in which such district is located, the board of trustees of any road improvement district may contract for the installment, maintenance, and operation of road lighting systems sufficient to light any road in the district or any portion thereof when, in the judgment of the board of

trustees, the lighting of such road or any portion thereof is in the interest of public safety. The cost of installing, maintaining, and operating such road lighting systems shall be levied as a special assessment against the real property specially benefited thereby in proportion to the benefit received. No such special assessment shall exceed thirty-five cents on each one hundred dollars upon the taxable valuation of such property.

Source: Laws 1961, c. 201, § 1, p. 604; Laws 1979, LB 187, § 161; Laws 1992, LB 719A, § 140; Laws 2015, LB361, § 56.
Effective date August 30, 2015.



CHAPTER 40

HOMESTEADS

Section

40-104. Homestead; how conveyed or encumbered; assertion of claim of invalidity of conveyance.

40-104 Homestead; how conveyed or encumbered; assertion of claim of invalidity of conveyance.

Except as otherwise provided in this section, the homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both spouses. The interest of either or both spouses may be conveyed or encumbered by a conservator acting in accordance with the provisions of the Nebraska Probate Code and may also be conveyed or encumbered by an attorney in fact appointed by and acting on behalf of either spouse under any power of attorney which grants the power to sell and convey real property. Any claim of invalidity of a deed of conveyance of homestead property because of failure to comply with the provisions of this section must be asserted within the time provided in sections 76-288 to 76-298.

A purchase agreement or contract for sale of homestead property signed by both spouses does not require acknowledgment to be enforceable.

Source: Laws 1879, § 4, p. 58; R.S.1913, § 3079; C.S.1922, § 2819; C.S.1929, § 40-104; Laws 1935, c. 91, § 1, p. 312; C.S.Supp.,1941, § 40-104; R.S.1943, § 40-104; Laws 1947, c. 243, § 13, p. 767; Laws 2006, LB 409, § 1; Laws 2015, LB253, § 1.

Effective date August 30, 2015.

Cross References

For provisions as to mortgaging interest in homestead of incompetent spouse, see sections 42-501 to 42-503.
Nebraska Probate Code, see section 30-2201.



HUSBAND AND WIFE

**CHAPTER 42
HUSBAND AND WIFE**

Article.

7. Uniform Interstate Family Support Act.
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Part II—Jurisdiction. 42-705 to 42-713.02.
Part III—Civil Provisions of General Application. 42-714 to 42-732.
Part IV—Establishment of Support Order or Determination of Parentage.
42-733, 42-733.01.
Part V—Enforcement of Support Order Without Registration. 42-734.03 to
42-735.
Part VI—Registration, Enforcement, and Modification of Support Order.
42-736 to 42-747.04.
Part VII—Support Proceeding under Convention. 42-748 to 42-748.13.
Part IX—Miscellaneous Provisions. 42-751.01.

ARTICLE 7

UNIFORM INTERSTATE FAMILY SUPPORT ACT

(a) UNIFORM INTERSTATE FAMILY SUPPORT ACT
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Section

- 42-701. Act, how cited.
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42-703. Tribunal of this state; support enforcement agency.
42-704. Remedies cumulative; applicability of act.
42-704.01. Application of act to resident of foreign country and foreign support proceeding.

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§ 42-701

HUSBAND AND WIFE

Section

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42-746. Modification of child support order of another state.

42-747.01. Jurisdiction to modify child support order of another state when individual parties reside in this state.

42-747.03. Jurisdiction to modify child support order of foreign country.

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42-748.04. Initiation by Nebraska Department of Health and Human Services of support proceeding under Convention.

42-748.05. Direct request.

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42-748.12. Personal information; limit on use.

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42-751.01. Transitional provision.

(a) UNIFORM INTERSTATE FAMILY SUPPORT ACT

PART I—GENERAL PROVISIONS

42-701 Act, how cited.

Sections 42-701 to 42-751.01 shall be known and may be cited as the Uniform Interstate Family Support Act.

Source: Laws 1993, LB 500, § 1; Laws 1997, LB 727, § 1; Laws 2003, LB 148, § 43; Laws 2015, LB415, § 1.

Effective date April 30, 2015.

42-702 Definitions.

In the Uniform Interstate Family Support Act:

(1) Child means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) Child support order means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

(3) Convention means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

(4) Duty of support means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(5) Foreign country means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(A) Which has been declared under the law of the United States to be a foreign reciprocating country;

(B) Which has established a reciprocal arrangement for child support with this state as provided in section 42-721;

(C) Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under the act; or

(D) In which the Convention is in force with respect to the United States.

(6) Foreign support order means a support order of a foreign tribunal.

(7) Foreign tribunal means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

(8) Home state means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(9) Income includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(10) Income withholding order means an order or other legal process directed to an obligor's employer or other payor, as defined by the Income Withholding for Child Support Act or sections 42-347 to 42-381, to withhold support from the income of the obligor.

(11) Initiating tribunal means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

(12) Issuing foreign country means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(13) Issuing state means the state in which a tribunal issues a support order or judgment determining parentage of a child.

(14) Issuing tribunal means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

(15) Law includes decisional and statutory law and rules and regulations having the force of law.

(16) Obligee means:

(A) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(B) A foreign country, state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support;

(C) An individual seeking a judgment determining parentage of the individual's child; or

(D) A person that is a creditor in a proceeding under sections 42-748.01 to 42-748.13.

(17) Obligor means an individual, or the estate of a decedent that:

(A) Owes or is alleged to owe a duty of support;

(B) Is alleged but has not been adjudicated to be a parent of a child;

(C) Is liable under a support order; or

(D) Is a debtor in a proceeding under sections 42-748.01 to 42-748.13.

(18) Outside this state means a location in another state or a country other than the United States, whether or not the country is a foreign country.

(19) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(21) Register means to record or file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country.

(22) Registering tribunal means a tribunal in which a support order or judgment determining parentage of a child is registered.

(23) Responding state means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.

(24) Responding tribunal means the authorized tribunal in a responding state or foreign country.

(25) Spousal support order means a support order for a spouse or former spouse of the obligor.

(26) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.

(27) Support enforcement agency means a public official, governmental entity, or private agency authorized to:

(A) Seek enforcement of support orders or laws relating to the duty of support;

(B) Seek establishment or modification of child support;

(C) Request determination of parentage of a child;

(D) Attempt to locate obligors or their assets; or

(E) Request determination of the controlling child support order.

(28) Support order means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney's fees, and other relief.

(29) Tribunal means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.

Source: Laws 1993, LB 500, § 2; Laws 1997, LB 727, § 2; Laws 2003, LB 148, § 44; Laws 2015, LB415, § 2.

Effective date April 30, 2015.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

42-703 Tribunal of this state; support enforcement agency.

(a) The district court is the tribunal of this state.

(b) The Department of Health and Human Services is the support enforcement agency of this state.

Source: Laws 1993, LB 500, § 3; Laws 2015, LB415, § 3.

Effective date April 30, 2015.

42-704 Remedies cumulative; applicability of act.

(a) Remedies provided by the Uniform Interstate Family Support Act are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

(b) The Uniform Interstate Family Support Act does not:

(1) Provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under the act.

Source: Laws 1993, LB 500, § 4; Laws 2003, LB 148, § 45; Laws 2015, LB415, § 4.

Effective date April 30, 2015.

42-704.01 Application of act to resident of foreign country and foreign support proceeding.

(a) A tribunal of this state shall apply sections 42-701 to 42-747.04 and, as applicable, sections 42-748.01 to 42-748.13, to a support proceeding involving:

(i) A foreign support order;

(ii) A foreign tribunal; or

(iii) An obligee, obligor, or child residing in a foreign country.

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of sections 42-701 to 42-747.04.

(c) Sections 42-748.01 to 42-748.13 apply only to a support proceeding under the Convention. In such a proceeding, if a provision of such sections is inconsistent with sections 42-701 to 42-747.04, sections 42-748.01 to 42-748.13 control.

Source: Laws 2015, LB415, § 5.

Effective date April 30, 2015.

PART II—JURISDICTION

42-705 Basis for jurisdiction over nonresident.

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) The individual is personally served with notice within this state;

(2) The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) The individual resided with the child in this state;

(4) The individual resided in this state and provided prenatal expenses or support for the child;

(5) The child resides in this state as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) The individual asserted parentage of a child in this state pursuant to section 43-104.02, 71-628, 71-640.01, or 71-640.02 with the Department of Health and Human Services; or

(8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) of this section or in any other law of this state shall not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of section 42-746 are met or, in the case of a foreign support order, unless the requirements of section 42-747.03 are met.

Source: Laws 1993, LB 500, § 5; Laws 1996, LB 1044, § 101; Laws 2003, LB 148, § 46; Laws 2007, LB296, § 60; Laws 2015, LB415, § 6.
Effective date April 30, 2015.

42-707 Initiating and responding tribunal of this state.

Under the Uniform Interstate Family Support Act, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or a foreign country.

Source: Laws 1993, LB 500, § 7; Laws 2015, LB415, § 7.
Effective date April 30, 2015.

42-708 Simultaneous proceedings.

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state or a foreign country only if:

(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(2) the contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) the petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) the contesting party timely challenges the exercise of jurisdiction in this state; and

(3) if relevant, the other state or foreign country is the home state of the child.

Source: Laws 1993, LB 500, § 8; Laws 2015, LB415, § 8.
Effective date April 30, 2015.

42-710 Enforcement of support order by tribunal having continuing jurisdiction.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

Source: Laws 1993, LB 500, § 10; Laws 2003, LB 148, § 49; Laws 2015, LB415, § 9.
Effective date April 30, 2015.

42-711 Recognition of controlling child support order.

(a) If a proceeding is brought under the Uniform Interstate Family Support Act and only one tribunal has issued a child support order, the order of that tribunal controls and must be recognized.

(b) If a proceeding is brought under the Uniform Interstate Family Support Act and two or more child support orders have been issued by tribunals of this state, another state, or a foreign country with regard to the same obligor and the same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under the act, the order of that tribunal controls.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under the act:

(A) an order issued by a tribunal in the current home state of the child controls; or

(B) if an order has not been issued in the current home state of the child, the order most recently issued controls.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under the act, the tribunal of this state shall issue a child support order, which controls.

(c) If two or more child support orders have been issued for the same obligor and the same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (b) of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to sections 42-736 to 42-747.04 or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order shall be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section has continuing jurisdiction to the extent provided in section 42-709 or 42-710.

(f) A tribunal of this state that determines by order which is the controlling order under subdivision (b)(1) or (b)(2) or subsection (c) of this section or that issues a new controlling order under subdivision (b)(3) of this section shall state in that order:

- (1) the basis upon which the tribunal made its determination;
- (2) the amount of prospective support, if any; and
- (3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by section 42-713.

(g) Within thirty days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section shall be recognized in proceedings under the Uniform Interstate Family Support Act.

Source: Laws 1993, LB 500, § 11; Laws 1997, LB 727, § 4; Laws 2003, LB 148, § 50; Laws 2015, LB415, § 10.
Effective date April 30, 2015.

42-712 Child support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

Source: Laws 1993, LB 500, § 12; Laws 2003, LB 148, § 51; Laws 2015, LB415, § 11.
Effective date April 30, 2015.

42-713 Credits for payments.

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this state, another state, or a foreign country.

Source: Laws 1993, LB 500, § 13; Laws 2003, LB 148, § 52; Laws 2015, LB415, § 12.
Effective date April 30, 2015.

42-713.01 Application of act to nonresident subject to personal jurisdiction.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under the Uniform Interstate Family Support Act or under other law of this state relating to a support order or recognizing a foreign support order may receive evidence from outside this state pursuant to section 42-729, communicate with a tribunal outside this state pursuant to section 42-730, and obtain discovery through a tribunal outside this state pursuant to section 42-731. In all other respects, sections 42-714 to 42-747.04 do not apply and the tribunal shall apply the procedural and substantive law of this state.

Source: Laws 2003, LB 148, § 53; Laws 2015, LB415, § 13.
Effective date April 30, 2015.

42-713.02 Continuing, exclusive jurisdiction to modify spousal support order.

(a) A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(b) A tribunal of this state shall not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(1) an initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(2) a responding tribunal to enforce or modify its own spousal support order.

Source: Laws 2003, LB 148, § 54; Laws 2015, LB415, § 14.
Effective date April 30, 2015.

PART III—CIVIL PROVISIONS OF GENERAL APPLICATION

42-714 Proceedings under the Uniform Interstate Family Support Act.

(a) Except as otherwise provided in the Uniform Interstate Family Support Act, sections 42-714 to 42-732 apply to all proceedings under the act.

(b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under the act by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

Source: Laws 1993, LB 500, § 14; Laws 1997, LB 727, § 5; Laws 2003, LB 148, § 55; Laws 2015, LB415, § 15.
Effective date April 30, 2015.

42-717 Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by the Uniform Interstate Family Support Act, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

Source: Laws 1993, LB 500, § 17; Laws 1997, LB 727, § 6; Laws 2003, LB 148, § 57; Laws 2015, LB415, § 16.
Effective date April 30, 2015.

42-718 Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection (b) of section 42-714, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) establish or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage of a child;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearages, and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, electronic mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) issue a *capias* for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the *capias* in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs;

(12) issue an order releasing or subordinating a lien pursuant to section 42-371; and

(13) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under the Uniform Interstate Family Support Act, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state shall not condition the payment of a support order issued under the act upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under the act, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrearages, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

Source: Laws 1993, LB 500, § 18; Laws 1997, LB 727, § 7; Laws 2003, LB 148, § 58; Laws 2015, LB415, § 17.
Effective date April 30, 2015.

42-719 Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the petitioner where and when the pleading was sent.

Source: Laws 1993, LB 500, § 19; Laws 1997, LB 727, § 8; Laws 2003, LB 148, § 59; Laws 2015, LB415, § 18.
Effective date April 30, 2015.

42-720 Duties of support enforcement agency.

(a) In a proceeding under the Uniform Interstate Family Support Act, a support enforcement agency of this state, upon request:

- (1) shall provide services to a petitioner residing in a state;
- (2) shall provide services to a petitioner requesting services through a central authority of a foreign country as described in subdivision (5)(A) or (D) of section 42-702; and
- (3) may provide services to a petitioner who is an individual not residing in a state.

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

- (1) take all steps necessary to enable an appropriate tribunal of this state, another state, or a foreign country to obtain jurisdiction over the respondent;
- (2) request an appropriate tribunal to set a date, time, and place for a hearing;
- (3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
- (4) within five days, exclusive of nonjudicial days, after receipt of a written notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;
- (5) within five days, exclusive of nonjudicial days, after receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order; or

(2) if two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrearages, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this state shall request a tribunal of this state to issue a child support order and an income withholding order that redirect payment of current support, arrearages, and interest if requested to do so by a support enforcement agency of another state pursuant to section 42-732.

(f) The act does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Source: Laws 1993, LB 500, § 20; Laws 1997, LB 727, § 9; Laws 2003, LB 148, § 60; Laws 2003, LB 760, § 15; Laws 2015, LB415, § 19.

Effective date April 30, 2015.

42-721 Attorney General; powers.

(a) If the Attorney General determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Attorney General may order the agency to perform its duties under the Uniform Interstate Family Support Act or may provide those services directly to the individual.

(b) The Attorney General may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

Source: Laws 1993, LB 500, § 21; Laws 2003, LB 148, § 61; Laws 2015, LB415, § 20.

Effective date April 30, 2015.

42-723 Duties of state information agency.

(a) The Department of Health and Human Services is the state information agency under the Uniform Interstate Family Support Act.

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under the act and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under the act received from another state or a foreign country; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

Source: Laws 1993, LB 500, § 23; Laws 1996, LB 1044, § 102; Laws 1997, LB 307, § 18; Laws 2003, LB 148, § 62; Laws 2015, LB415, § 21.

Effective date April 30, 2015.

42-724 Pleadings and accompanying documents.

(a) In a proceeding under the Uniform Interstate Family Support Act, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country shall file a petition. Unless otherwise ordered under section 42-725, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition shall be accompanied by a copy of any support order known to have been issued by another tribunal. The accompanying documents may include any other information that may assist in locating or identifying the respondent.

(b) The petition shall specify the relief sought. The petition and accompanying documents shall conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

Source: Laws 1993, LB 500, § 24; Laws 2003, LB 148, § 63; Laws 2015, LB415, § 22.

Effective date April 30, 2015.

42-726 Costs and fees.

(a) The petitioner shall not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal shall not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney,

who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under sections 42-736 to 42-747.04, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

Source: Laws 1993, LB 500, § 26; Laws 2003, LB 148, § 65; Laws 2015, LB415, § 23.

Effective date April 30, 2015.

42-729 Special rules of evidence and procedure.

(a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier, or other electronic means that do not provide an original record shall not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under the Uniform Interstate Family Support Act, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under the act.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under the act.

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

Source: Laws 1993, LB 500, § 29; Laws 2003, LB 148, § 67; Laws 2015, LB415, § 24.

Effective date April 30, 2015.

42-730 Communications between tribunals.

A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail, or other means to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

Source: Laws 1993, LB 500, § 30; Laws 2003, LB 148, § 68; Laws 2015, LB415, § 25.

Effective date April 30, 2015.

42-731 Assistance with discovery.

A tribunal of this state may:

- (1) request a tribunal outside this state to assist in obtaining discovery; and
- (2) upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

Source: Laws 1993, LB 500, § 31; Laws 2015, LB415, § 26.

Effective date April 30, 2015.

42-732 Receipt and disbursement of payments.

(a) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

- (1) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and
- (2) issue and send to the obligor's employer a conforming income withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (b) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

Source: Laws 1993, LB 500, § 32; Laws 2003, LB 148, § 69; Laws 2015, LB415, § 27.

Effective date April 30, 2015.

PART IV—ESTABLISHMENT OF SUPPORT ORDER
OR DETERMINATION OF PARENTAGE**42-733 Establishment of support order.**

(a) If a support order entitled to recognition under the Uniform Interstate Family Support Act has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

- (1) the individual seeking the order resides outside this state; or
- (2) the support enforcement agency seeking the order is located outside this state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

- (1) a presumed father of the child;
- (2) petitioning to have his paternity adjudicated;
- (3) identified as the father of the child through genetic testing;
- (4) an alleged father who has declined to submit to genetic testing;
- (5) shown by clear and convincing evidence to be the father of the child;
- (6) the father of a child whose paternity is established either by judicial proceeding or acknowledgment under sections 43-1401 to 43-1418;
- (7) the mother of the child; or
- (8) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 42-718.

Source: Laws 1993, LB 500, § 33; Laws 2003, LB 148, § 70; Laws 2015, LB415, § 28.
Effective date April 30, 2015.

42-733.01 Proceeding to determine parentage.

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under the Uniform Interstate Family Support Act or a law or procedure substantially similar to the act.

Source: Laws 2015, LB415, § 29.
Effective date April 30, 2015.

PART V—ENFORCEMENT OF SUPPORT
ORDER WITHOUT REGISTRATION**42-734.03 Immunity from civil liability.**

An employer that complies with an income withholding order issued in another state in accordance with sections 42-734 to 42-735 is not subject to

civil liability to any individual or agency with regard to the employer's withholding of child support from the obligor's income.

Source: Laws 1997, LB 727, § 13; Laws 2015, LB415, § 30.
Effective date April 30, 2015.

42-734.04 Penalties for noncompliance.

An employer that willfully fails to comply with an income withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

Source: Laws 1997, LB 727, § 14; Laws 2015, LB415, § 31.
Effective date April 30, 2015.

42-734.05 Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in sections 42-736 to 42-747.04 or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

(b) The obligor shall give notice of the contest to:

- (1) a support enforcement agency providing services to the obligee;
- (2) each employer that has directly received an income withholding order relating to the obligor; and
- (3) the person designated to receive payments in the income withholding order or, if no person is designated, to the obligee.

Source: Laws 1997, LB 727, § 15; Laws 2003, LB 148, § 74; Laws 2015, LB415, § 32.
Effective date April 30, 2015.

42-735 Administrative enforcement of orders.

(a) A party or support enforcement agency seeking to enforce a support order or an income withholding order, or both, issued in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to the Uniform Interstate Family Support Act.

Source: Laws 1993, LB 500, § 35; Laws 2003, LB 148, § 75; Laws 2015, LB415, § 33.
Effective date April 30, 2015.

PART VI—REGISTRATION, ENFORCEMENT, AND
MODIFICATION OF SUPPORT ORDER**42-736 Registration of order for enforcement.**

A support order or an income withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

Source: Laws 1993, LB 500, § 36; Laws 2015, LB415, § 34.
Effective date April 30, 2015.

42-737 Procedure to register order for enforcement.

(a) Except as provided in section 42-748.06, a support order or an income withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state:

- (1) a letter of transmittal to the tribunal requesting registration and enforcement;
- (2) two copies, including one certified copy, of the order to be registered, including any modification of the order;
- (3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;
- (4) the name of the obligor and, if known:
 - (A) the obligor's address and social security number;
 - (B) the name and address of the obligor's employer or other payor and any other source of income of the obligor; and
 - (C) a description and the location of property of the obligor in this state not exempt from execution; and
- (5) except as otherwise provided in section 42-725, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading shall specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

- (1) furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;
- (2) specify the order alleged to be the controlling order, if any; and
- (3) specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give

notice of the request to each party whose rights may be affected by the determination.

Source: Laws 1993, LB 500, § 37; Laws 2003, LB 148, § 76; Laws 2015, LB415, § 35.

Effective date April 30, 2015.

42-738 Effect of registration for enforcement.

(a) A support order or income withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in the Uniform Interstate Family Support Act, a tribunal of this state shall recognize and enforce, but shall not modify, a registered support order if the issuing tribunal had jurisdiction.

Source: Laws 1993, LB 500, § 38; Laws 2003, LB 148, § 77; Laws 2015, LB415, § 36.

Effective date April 30, 2015.

42-739 Choice of law.

(a) Except as otherwise provided in subsection (d) of this section, the law of the issuing state or foreign country governs:

(1) the nature, extent, amount, and duration of current payments under a registered support order;

(2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) the existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrearages under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrearages and interest due on a support order of another state or a foreign country registered in this state.

(d) After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrearages, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrearages, on current and future support, and on consolidated arrearages.

Source: Laws 1993, LB 500, § 39; Laws 2003, LB 148, § 78; Laws 2015, LB415, § 37.

Effective date April 30, 2015.

42-740 Notice of registration of order.

(a) When a support order or income withholding order issued in another state or a foreign support order is registered, the registering tribunal of this

state shall notify the nonregistering party. The notice shall be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice shall inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order shall be requested within twenty days after notice unless the registered order is under section 42-748.07;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(4) of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, a notice shall also:

(1) identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrearages, if any;

(2) notify the nonregistering party of the right to a determination of which is the controlling order;

(3) state that the procedures provided in subsection (b) of this section apply to the determination of which is the controlling order; and

(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the Income Withholding for Child Support Act or sections 42-347 to 42-381.

Source: Laws 1993, LB 500, § 40; Laws 1997, LB 727, § 16; Laws 2003, LB 148, § 79; Laws 2015, LB415, § 38.
Effective date April 30, 2015.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

42-741 Procedure to contest validity or enforcement of registered support order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by section 42-740. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 42-742.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall

schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

Source: Laws 1993, LB 500, § 41; Laws 1997, LB 727, § 17; Laws 2015, LB415, § 39.

Effective date April 30, 2015.

42-742 Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) the order was obtained by fraud;
- (3) the order has been vacated, suspended, or modified by a later order;
- (4) the issuing tribunal has stayed the order pending appeal;
- (5) there is a defense under the law of this state to the remedy sought;
- (6) full or partial payment has been made;
- (7) the statute of limitation under section 42-739 precludes enforcement of some or all of the alleged arrearages; or
- (8) the alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under such subsection to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

Source: Laws 1993, LB 500, § 42; Laws 2003, LB 148, § 80; Laws 2015, LB415, § 40.

Effective date April 30, 2015.

42-743 Confirmed order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Source: Laws 1993, LB 500, § 43; Laws 2015, LB415, § 41.

Effective date April 30, 2015.

42-744 Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in sections 42-736 to 42-743 if the order has not been registered. A petition for modification may be filed at the same

time as a request for registration, or later. The pleading must specify the grounds for modification.

Source: Laws 1993, LB 500, § 44; Laws 2015, LB415, § 42.
Effective date April 30, 2015.

42-745 Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of section 42-746 or 42-747.01 have been met.

Source: Laws 1993, LB 500, § 45; Laws 2003, LB 148, § 81; Laws 2015, LB415, § 43.
Effective date April 30, 2015.

42-746 Modification of child support order of another state.

(a) If section 42-747.01 does not apply, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

(1) the following requirements are met:

(A) neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(B) a petitioner who is a nonresident of this state seeks modification; and

(C) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) this state is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state shall not modify any aspect of a child support order that cannot be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and the same child, the order that controls and must be so recognized under section 42-711 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(e) On the issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

(f) Notwithstanding subsections (a) through (e) of this section and subsection (b) of section 42-705, a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

- (1) one party resides in another state; and
- (2) the other party resides outside the United States.

Source: Laws 1993, LB 500, § 46; Laws 1997, LB 727, § 18; Laws 2003, LB 148, § 82; Laws 2015, LB415, § 44.
Effective date April 30, 2015.

42-747.01 Jurisdiction to modify child support order of another state when individual parties reside in this state.

(a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of sections 42-701 to 42-713.02 and 42-736 to 42-747.04 and the procedural and substantive law of this state to the enforcement or modification proceeding. Sections 42-714 to 42-735 and 42-748.01 to 42-750 do not apply.

Source: Laws 1997, LB 727, § 20; Laws 2003, LB 148, § 84; Laws 2015, LB415, § 45.
Effective date April 30, 2015.

42-747.03 Jurisdiction to modify child support order of foreign country.

(a) Except as otherwise provided in section 42-748.11, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child support order otherwise required of the individual pursuant to section 42-746 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(b) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.

Source: Laws 2003, LB 148, § 85; Laws 2015, LB415, § 46.
Effective date April 30, 2015.

42-747.04 Procedure to register child support order of foreign country for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child-support order not under the Convention may register that order in this state under sections 42-736 to 42-743 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

Source: Laws 2015, LB415, § 47.
Effective date April 30, 2015.

PART VII—SUPPORT PROCEEDING UNDER CONVENTION

42-748 Repealed. Laws 2015, LB 415, § 64.**42-748.01 Definitions.**

For purposes of sections 42-748.01 to 42-748.13:

(1) Application means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) Central authority means the entity designated by the United States or a foreign country described in subdivision (5)(D) of section 42-702 to perform the functions specified in the Convention.

(3) Convention support order means a support order of a tribunal of a foreign country described in subdivision (5)(D) of section 42-702.

(4) Direct request means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, an obligor, or a child residing outside the United States.

(5) Foreign central authority means the entity designated by a foreign country described in subdivision (5)(D) of section 42-702 to perform the functions specified in the Convention.

(6) Foreign support agreement:

(A) means an agreement for support in a record that:

(i) is enforceable as a support order in the country of origin;

(ii) has been:

(I) formally drawn up or registered as an authentic instrument by a foreign tribunal; or

(II) authenticated by, or concluded, registered, or filed with a foreign tribunal; and

(iii) may be reviewed and modified by a foreign tribunal; and

(B) includes a maintenance arrangement or authentic instrument under the Convention.

(7) United States central authority means the Secretary of the United States Department of Health and Human Services.

Source: Laws 2015, LB415, § 48.

Effective date April 30, 2015.

42-748.02 Applicability.

Sections 42-748.01 to 42-748.13 apply only to a support proceeding under the Convention. In such a proceeding, if a provision of such sections is inconsistent with sections 42-701 to 42-747.04, sections 42-748.01 to 42-748.13 control.

Source: Laws 2015, LB415, § 49.

Effective date April 30, 2015.

42-748.03 Relationship of Nebraska Department of Health and Human Services to United States central authority.

The Nebraska Department of Health and Human Services is recognized as the agency designated by the United States central authority to perform specific functions under the Convention.

Source: Laws 2015, LB415, § 50.
Effective date April 30, 2015.

42-748.04 Initiation by Nebraska Department of Health and Human Services of support proceeding under Convention.

(a) In a support proceeding under sections 42-748.01 to 42-748.13, the Nebraska Department of Health and Human Services shall:

(1) transmit and receive applications; and
(2) initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee under the Convention:

(1) recognition or recognition and enforcement of a foreign support order;
(2) enforcement of a support order issued or recognized in this state;
(3) establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;
(4) establishment of a support order if recognition of a foreign support order is refused under subdivision (b)(2), (4), or (9) of section 42-748.08;
(5) modification of a support order of a tribunal of this state; and
(6) modification of a support order of a tribunal of another state or a foreign country.

(c) The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

(1) recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;
(2) modification of a support order of a tribunal of this state; and
(3) modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of this state may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

Source: Laws 2015, LB415, § 51.
Effective date April 30, 2015.

42-748.05 Direct request.

(a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, sections 42-748.06 to 42-748.13 apply.

(c) In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

(1) a security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

(2) an obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(d) A petitioner filing a direct request is not entitled to assistance from the Nebraska Department of Health and Human Services.

(e) Sections 42-748.01 to 42-748.13 do not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

Source: Laws 2015, LB415, § 52.

Effective date April 30, 2015.

42-748.06 Registration of Convention support order.

(a) Except as otherwise provided in sections 42-748.01 to 42-748.13, a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in this state as provided in sections 42-736 to 42-747.04.

(b) Notwithstanding section 42-724 and subsection (a) of section 42-737, a request for registration of a Convention support order must be accompanied by:

(1) a complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

(2) a record stating that the support order is enforceable in the issuing country;

(3) if the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) a record showing the amount of arrears, if any, and the date the amount was calculated;

(5) a record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) if necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under section 42-748.07 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.

Source: Laws 2015, LB415, § 53.
Effective date April 30, 2015.

42-748.07 Contest of registered Convention support order.

(a) Except as otherwise provided in sections 42-748.01 to 42-748.13, sections 42-740 to 42-743 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than thirty days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than sixty days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in subsection (b) of this section, the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in section 42-748.08. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) may not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

Source: Laws 2015, LB415, § 54.
Effective date April 30, 2015.

42-748.08 Recognition and enforcement of registered Convention support order.

(a) Except as otherwise provided in subsection (b) of this section, a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) the issuing tribunal lacked personal jurisdiction consistent with section 42-705;

(3) the order is not enforceable in the issuing country;

(4) the order was obtained by fraud in connection with a matter of procedure;

(5) a record transmitted in accordance with section 42-748.06 lacks authenticity or integrity;

(6) a proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) the order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under the Uniform Interstate Family Support Act in this state;

(8) payment, to the extent alleged arrears have been paid in whole or in part;

(9) in a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(A) if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(B) if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) the order was made in violation of section 42-748.11.

(c) If a tribunal of this state does not recognize a Convention support order under subdivision (b)(2), (4), or (9) of this section:

(1) the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) the Nebraska Department of Health and Human Services shall take all appropriate measures to request a child-support order for the obligee if the application for recognition and enforcement was received under section 42-748.04.

Source: Laws 2015, LB415, § 55.
Effective date April 30, 2015.

42-748.09 Partial enforcement.

If a tribunal of this state does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order.

Source: Laws 2015, LB415, § 56.
Effective date April 30, 2015.

42-748.10 Foreign support agreement.

(a) Except as otherwise provided in subsections (c) and (d) of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) a complete text of the foreign support agreement; and

(2) a record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) the agreement was obtained by fraud or falsification;

(3) the agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under the Uniform Interstate Family Support Act in this state; or

(4) the record submitted under subsection (b) of this section lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

Source: Laws 2015, LB415, § 57.
Effective date April 30, 2015.

42-748.11 Modification of Convention child support order.

(a) A tribunal of this state may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) the obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a Convention child support order because the order is not recognized in this state, subsection (c) of section 42-748.08 applies.

Source: Laws 2015, LB415, § 58.
Effective date April 30, 2015.

42-748.12 Personal information; limit on use.

Personal information gathered or transmitted under sections 42-748.01 to 42-748.13 may be used only for the purposes for which it was gathered or transmitted.

Source: Laws 2015, LB415, § 59.
Effective date April 30, 2015.

42-748.13 Record in original language; English translation.

A record filed with a tribunal of this state under sections 42-748.01 to 42-748.13 must be in the original language and, if not in English, must be accompanied by an English translation.

Source: Laws 2015, LB415, § 60.
Effective date April 30, 2015.

PART IX—MISCELLANEOUS PROVISIONS

42-751.01 Transitional provision.

The changes to the Uniform Interstate Family Support Act made by Laws 2015, LB415, apply to proceedings begun on or after April 30, 2015, to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

Source: Laws 2015, LB415, § 61.
Effective date April 30, 2015.



INFANTS AND JUVENILES

**CHAPTER 43
INFANTS AND JUVENILES**

Article.

- 2. Juvenile Code.
 - (b) General Provisions. 43-245 to 43-247.
 - (c) Law Enforcement Procedures. 43-250 to 43-252.
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**ARTICLE 2
JUVENILE CODE**

(b) GENERAL PROVISIONS

Section

- 43-245. Terms, defined.
- 43-246.01. Juvenile court; exclusive original and concurrent original jurisdiction.
- 43-247. Juvenile court; jurisdiction.

(c) LAW ENFORCEMENT PROCEDURES

- 43-250. Temporary custody; disposition; custody requirements.
- 43-251.01. Juveniles; placements and commitments; restrictions.
- 43-251.02. Reference to clinically credentialed community-based provider.
- 43-251.03. Limitation on use of restraints; written findings.
- 43-252. Fingerprints; when authorized; disposition.

(d) PREADJUDICATION PROCEDURES

- 43-272. Right to counsel; appointment; payment; guardian ad litem; appointment; when; duties; standards.

§ 43-245

INFANTS AND JUVENILES

Section

- 43-272.01. Guardian ad litem; appointment; powers and duties; consultation; payment of costs; compensation.
(e) PROSECUTION
- 43-276. County attorney; city attorney; criminal charge, juvenile court petition, pretrial diversion, mediation, or transfer of case; determination; considerations; referral to community-based resources.
(f) ADJUDICATION PROCEDURES
- 43-279.01. Juvenile in need of assistance or termination of parental rights; rights of parties; appointment of counsel; court; powers; proceedings.
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43-285. Care of juvenile; duties; authority; placement plan and report; when; independence hearing; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.
- 43-297.01. Office of Probation Administration; duties; initial placement and level of care; court order; review; notice of placement change; hearing; exception; foster care placement; participation in proceedings.
(i) MISCELLANEOUS PROVISIONS
- 43-2,108. Juvenile court; files; how kept; certain reports and records not open to inspection without order of court; exceptions.
- 43-2,108.05. Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.
(k) CITATION AND CONSTRUCTION OF CODE
- 43-2,129. Code, how cited.

(b) GENERAL PROVISIONS

43-245 Terms, defined.

For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Abandonment means a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child;

(2) Age of majority means nineteen years of age;

(3) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

(4) Civil citation means a noncriminal notice which cannot result in a criminal record and is described in section 43-248.02;

(5) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

(6) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

(7) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

(8) Custodian means a nonparental caretaker having physical custody of the juvenile and includes an appointee described in section 43-294;

(9) Guardian means a person, other than a parent, who has qualified by law as the guardian of a juvenile pursuant to testamentary or court appointment, but excludes a person who is merely a guardian ad litem;

(10) Juvenile means any person under the age of eighteen;

(11) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;

(12) Juvenile detention facility has the same meaning as in section 83-4,125;

(13) Legal custody has the same meaning as in section 43-2922;

(14) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;

(15) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

(16) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;

(17) Nonsecure detention means detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes;

(18) Parent means one or both parents or stepparents when the stepparent is married to a parent who has physical custody of the juvenile as of the filing of the petition;

(19) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(20) Physical custody has the same meaning as in section 43-2922;

(21) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(22) Seal a record means that a record shall not be available to the public except upon the order of a court upon good cause shown;

(23) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(24) Staff secure juvenile facility has the same meaning as in section 83-4,125;

(25) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02;

(26) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction; and

(27) Young adult means an individual older than eighteen years of age but under twenty-one years of age.

Source: Laws 1981, LB 346, § 1; Laws 1985, LB 447, § 11; Laws 1987, LB 638, § 1; Laws 1989, LB 182, § 9; Laws 1996, LB 1296, § 20; Laws 1997, LB 622, § 62; Laws 1998, LB 1041, § 20; Laws 1998, LB 1073, § 11; Laws 2000, LB 1167, § 11; Laws 2004, LB 1083, § 91; Laws 2009, LB63, § 28; Laws 2010, LB800, § 12; Laws 2013, LB561, § 6; Laws 2014, LB464, § 7; Laws 2014, LB908, § 3; Laws 2015, LB265, § 2.

Operative date August 30, 2015.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-246.01 Juvenile court; exclusive original and concurrent original jurisdiction.

The juvenile court shall have:

(1) Exclusive original jurisdiction as to:

(a) Any juvenile described in subdivision (3) or (11) of section 43-247;

(b) Any juvenile who was under sixteen years of age at the time the alleged offense was committed and the offense falls under subdivision (1) of section 43-247;

(c) A party or proceeding described in subdivision (5) or (7) of section 43-247; and

(d) Any juvenile who was under fourteen years of age at the time the alleged offense was committed and the offense falls under subdivision (2) of section 43-247;

(2) Exclusive original jurisdiction as to:

(a) Beginning January 1, 2015, any juvenile who is alleged to have committed an offense under subdivision (1) of section 43-247 and who was sixteen years of age at the time the alleged offense was committed, and beginning January 1, 2017, any juvenile who is alleged to have committed an offense under subdivision (1) of section 43-247 and who was sixteen years of age or seventeen years of age at the time the alleged offense was committed; and

(b) Any juvenile who was fourteen years of age or older at the time the alleged offense was committed and the offense falls under subdivision (2) of section 43-247 except offenses enumerated in subdivision (1)(a)(ii) of section 29-1816.

Proceedings initiated under this subdivision (2) may be transferred as provided in section 43-274; and

(3) Concurrent original jurisdiction with the county court or district court as to:

- (a) Any juvenile described in subdivision (4) of section 43-247;
- (b) Any proceeding under subdivision (6), (8), (9), or (10) of section 43-247;
- (c) Any juvenile described in subdivision (1)(a)(ii) of section 29-1816; and
- (d) Until January 1, 2017, any juvenile who is alleged to have committed an offense under subdivision (1) of section 43-247 and who was seventeen years of age at the time the alleged offense was committed.

Proceedings initiated under this subdivision (3) may be transferred as provided in section 43-274.

Source: Laws 2014, LB464, § 9; Laws 2015, LB265, § 3.
Operative date August 30, 2015.

43-247 Juvenile court; jurisdiction.

The juvenile court in each county shall have jurisdiction of:

- (1) Any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance;
- (2) Any juvenile who has committed an act which would constitute a felony under the laws of this state;
- (3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation, including prostitution, dangerous to life or limb or injurious to the health or morals of such juvenile, (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who departs himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school, or (c) who is mentally ill and dangerous as defined in section 71-908;
- (4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245;
- (5) The parent, guardian, or custodian of any juvenile described in this section;
- (6) The proceedings for termination of parental rights;
- (7) Any juvenile who has been voluntarily relinquished, pursuant to section 43-106.01, to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;
- (8) Any juvenile who was a ward of the juvenile court at the inception of his or her guardianship and whose guardianship has been disrupted or terminated;
- (9) The adoption or guardianship proceedings for a child over which the juvenile court already has jurisdiction under another provision of the Nebraska Juvenile Code;

(10) The paternity or custody determination for a child over which the juvenile court already has jurisdiction;

(11) The proceedings under the Young Adult Bridge to Independence Act; and

(12) Except as provided in subdivision (11) of this section, any individual adjudged to be within the provisions of this section until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

Notwithstanding the provisions of the Nebraska Juvenile Code, the determination of jurisdiction over any Indian child as defined in section 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and the district court shall have exclusive jurisdiction in proceedings brought pursuant to section 71-510.

Source: Laws 1981, LB 346, § 3; Laws 1982, LB 215, § 2; Laws 1982, LB 787, § 2; Laws 1984, LB 13, § 77; Laws 1985, LB 255, § 32; Laws 1985, LB 447, § 13; Laws 1996, LB 1044, § 127; Laws 1997, LB 307, § 58; Laws 1997, LB 622, § 63; Laws 1998, LB 1041, § 22; Laws 2001, LB 23, § 1; Laws 2004, LB 1083, § 92; Laws 2006, LB 1115, § 31; Laws 2008, LB280, § 3; Laws 2008, LB1014, § 37; Laws 2013, LB255, § 9; Laws 2013, LB561, § 7; Laws 2014, LB464, § 8; Laws 2014, LB853, § 21; Laws 2015, LB265, § 4.

Operative date August 30, 2015.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

Paternity determinations, jurisdiction, see section 25-2740.

Young Adult Bridge to Independence Act, see section 43-4501.

(c) LAW ENFORCEMENT PROCEDURES

43-250 Temporary custody; disposition; custody requirements.

(1) A peace officer who takes a juvenile into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(a) The peace officer may release a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248;

(b) The peace officer may require a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248 to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in the written notice prepared in triplicate by the peace officer or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney or city attorney and, when required by the court, also file a copy of the notice with the court or the officer appointed by the court for such purpose; or

(c) The peace officer may retain temporary custody of a juvenile taken into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(i) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(ii) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(iii) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(iv) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(v) If, within the time limits specified in subdivision (1)(c)(i) or (1)(c)(ii) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(vi) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. Until January 1, 2013, a status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency,

other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(vii) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance.

(2) When a juvenile is taken into temporary custody pursuant to subdivision (2) or (7) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

(3) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subsection (2) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody pursuant to subdivision (3) of section 43-248 shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

(4) When a juvenile is taken into temporary custody pursuant to subdivision (6) of section 43-248, the peace officer shall deliver the juvenile to the enrolled school of such juvenile.

(5) A juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile had been taken into custody and was released.

(6) In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restric-

tive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 6; Laws 1982, LB 787, § 4; Laws 1985, LB 447, § 14; Laws 1988, LB 790, § 24; Laws 1996, LB 1044, § 128; Laws 1997, LB 622, § 65; Laws 1998, LB 1073, § 13; Laws 2000, LB 1167, § 12; Laws 2001, LB 451, § 5; Laws 2003, LB 43, § 12; Laws 2004, LB 1083, § 94; Laws 2009, LB63, § 29; Laws 2010, LB771, § 18; Laws 2010, LB800, § 15; Laws 2013, LB255, § 11; Laws 2015, LB294, § 15.
Operative date May 20, 2015.

43-251.01 Juveniles; placements and commitments; restrictions.

All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

(1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;

(2) A juvenile who is found to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center or committed to the Office of Juvenile Services;

(3) A juvenile who is found to be a juvenile as described in subdivision (1), (2), or (4) of section 43-247 shall not be assigned or transferred to an adult correctional facility or the secure youth confinement facility operated by the Department of Correctional Services;

(4) A juvenile under the age of fourteen years shall not be placed with or committed to a youth rehabilitation and treatment center;

(5) A juvenile shall not be detained in secure detention or placed at a youth rehabilitation and treatment center unless detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court;

(6) A juvenile alleged to be a juvenile as described in subdivision (3)(b) of section 43-247 shall not be placed in a juvenile detention facility, including a wing labeled as staff secure at such facility, unless the designated staff secure portion of the facility fully complies with subdivision (3) of section 83-4,125 and the ingress and egress to the facility are restricted solely through staff supervision; and

(7) A juvenile alleged to be a juvenile as described in subdivision (3)(b) of section 43-247 shall not be placed out of his or her home as a dispositional order of the court unless:

(a) All available community-based resources have been exhausted to assist the juvenile and his or her family; and

(b) Maintaining the juvenile in the home presents a significant risk of harm to the juvenile or community.

Source: Laws 1998, LB 1073, § 25; Laws 2012, LB972, § 1; Laws 2013, LB561, § 10; Laws 2015, LB482, § 1.
Effective date August 30, 2015.

43-251.02 Reference to clinically credentialed community-based provider.

A peace officer, upon making contact with a child who has not committed a criminal offense but who appears to be a juvenile as described in subdivision (3)(b) of section 43-247 and who is in need of assistance, may refer the child and child's parent or parents or guardian to a clinically credentialed community-based provider for immediate crisis intervention, de-escalation, and respite care services.

Source: Laws 2015, LB482, § 2.
Effective date August 30, 2015.

43-251.03 Limitation on use of restraints; written findings.

(1) Restraints shall not be used on a juvenile during a juvenile court proceeding and shall be removed prior to the juvenile's appearance before the juvenile court, unless the juvenile court makes a finding of probable cause that:

(a) The use of restraints is necessary:

(i) To prevent physical harm to the juvenile or another person;

(ii) Because the juvenile:

(A) Has a history of disruptive courtroom behavior that has placed others in potentially harmful situations; or

(B) Presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior; or

(iii) Because the juvenile presents a substantial risk of flight from the courtroom; and

(b) There is no less restrictive alternative to restraints that will prevent flight or physical harm to the juvenile or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(2) The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall make written findings of fact in support of the order.

(3) For purposes of this section, restraints includes, but is not limited to, handcuffs, chains, irons, straitjackets, and electronic restraint devices.

Source: Laws 2015, LB482, § 3.
Effective date August 30, 2015.

43-252 Fingerprints; when authorized; disposition.

(1) The fingerprints of any juvenile less than fourteen years of age, who has been taken into custody in the investigation of a suspected unlawful act, shall not be taken unless the consent of any district, county, associate county, associate separate juvenile court, or separate juvenile court judge has first been obtained.

(2) The fingerprints of any juvenile alleged or found to be a juvenile as described in subdivision (3)(b) of section 43-247 shall not be taken.

(3) If the judge permits the fingerprinting, the fingerprints must be filed by law enforcement officers in files kept separate from those of persons of the age of majority.

(4) The fingerprints of any juvenile shall not be sent to a state or federal depository by a law enforcement agency of this state unless: (a) The juvenile has

been convicted of or adjudged to have committed a felony; (b) the juvenile has unlawfully terminated his or her commitment to a youth rehabilitation and treatment center; or (c) the juvenile is a runaway and a fingerprint check is needed for identification purposes to return the juvenile to his or her parent.

Source: Laws 1981, LB 346, § 8; Laws 1982, LB 787, § 5; Laws 1994, LB 988, § 19; Laws 2015, LB482, § 4.
Effective date August 30, 2015.

(d) PREADJUDICATION PROCEDURES

43-272 Right to counsel; appointment; payment; guardian ad litem; appointment; when; duties; standards.

(1) When any juvenile shall be brought without counsel before a juvenile court, the court shall advise such juvenile and his or her parent or guardian of their right to retain counsel and shall inquire of such juvenile and his or her parent or guardian as to whether they desire to retain counsel. The court shall inform such juvenile and his or her parent or guardian of such juvenile's right to counsel at county expense if none of them is able to afford counsel. If the juvenile or his or her parent or guardian desires to have counsel appointed for such juvenile, or the parent or guardian of such juvenile cannot be located, and the court ascertains that none of such persons are able to afford an attorney, the court shall forthwith appoint an attorney to represent such juvenile for all proceedings before the juvenile court, except that if an attorney is appointed to represent such juvenile and the court later determines that a parent of such juvenile is able to afford an attorney, the court shall order such parent or juvenile to pay for services of the attorney to be collected in the same manner as provided by section 43-290. If the parent willfully refuses to pay any such sum, the court may commit him or her for contempt, and execution may issue at the request of the appointed attorney or the county attorney or by the court without a request.

(2) The court, on its own motion or upon application of a party to the proceedings, shall appoint a guardian ad litem for the juvenile: (a) If the juvenile has no parent or guardian of his or her person or if the parent or guardian of the juvenile cannot be located or cannot be brought before the court; (b) if the parent or guardian of the juvenile is excused from participation in all or any part of the proceedings; (c) if the parent is a juvenile or an incompetent; (d) if the parent is indifferent to the interests of the juvenile; or (e) in any proceeding pursuant to the provisions of subdivision (3)(a) of section 43-247.

A guardian ad litem shall have the duty to protect the interests of the juvenile for whom he or she has been appointed guardian, and shall be deemed a parent of the juvenile as to those proceedings with respect to which his or her guardianship extends.

(3) The court shall appoint an attorney as guardian ad litem. A guardian ad litem shall act as his or her own counsel and as counsel for the juvenile, unless there are special reasons in a particular case why the guardian ad litem or the juvenile or both should have separate counsel. In such cases the guardian ad litem shall have the right to counsel, except that the guardian ad litem shall be entitled to appointed counsel without regard to his or her financial ability to

retain counsel. Whether such appointed counsel shall be provided at the cost of the county shall be determined as provided in subsection (1) of this section.

(4) By July 1, 2015, the Supreme Court shall provide by court rule standards for guardians ad litem for juveniles in juvenile court proceedings.

Source: Laws 1981, LB 346, § 28; Laws 1982, LB 787, § 12; Laws 2000, LB 1167, § 19; Laws 2015, LB15, § 1.
Effective date April 30, 2015.

Cross References

Representation by public defender, see section 29-3915.

43-272.01 Guardian ad litem; appointment; powers and duties; consultation; payment of costs; compensation.

(1) A guardian ad litem as provided for in subsections (2) and (3) of section 43-272 shall be appointed when a child is removed from his or her surroundings pursuant to subdivision (2) or (3) of section 43-248, subsection (2) of section 43-250, or section 43-251. If removal has not occurred, a guardian ad litem shall be appointed at the commencement of all cases brought under subdivision (3)(a) or (7) of section 43-247 and section 28-707.

(2) In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem:

(a) Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition, shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests;

(b) Is not appointed to defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile;

(c) May at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section 43-258. The guardian ad litem shall have access to all reports resulting from any examination ordered under section 43-258, and such reports shall be used for evaluating the status of the protected juvenile;

(d) Shall make every reasonable effort to become familiar with the needs of the protected juvenile which (i) shall include consultation with the juvenile in his or her respective placement within two weeks after the appointment and once every six months thereafter, unless the court approves other methods of consultation as provided in subsection (6) of this section, and inquiry of the most current caseworker, foster parent, or other custodian and (ii) may include inquiry of others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases and the development of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members;

(e) May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings. In any proceeding under this section relating to a child of

school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence;

(f) Shall be responsible for making written reports and recommendations to the court at every dispositional, review, or permanency planning hearing regarding the temporary and permanent placement of the protected juvenile, the type and number of contacts with the juvenile, the type and number of contacts with other individuals described in subdivision (d) of this subsection, and any further relevant information on a form prepared by the Supreme Court. As an alternative to the written reports and recommendations, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing. A copy of the written reports and recommendations to the court or a copy of the checklist presented to the court shall also be submitted to the Foster Care Review Office for any juvenile in foster care placement as defined in section 43-1301;

(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case; and

(h) May file a petition in the juvenile court on behalf of the juvenile, including a supplemental petition as provided in section 43-291.

(3) Nothing in this section shall operate to limit the discretion of the juvenile court in protecting the best interests of a juvenile who is the subject of a juvenile court petition.

(4) For purposes of subdivision (2)(d) of this section, the court may order the expense of such consultation, if any, to be paid by the county in which the juvenile court action is brought or the court may, after notice and hearing, assess the cost of such consultation, if any, in whole or in part to the parents of the juvenile. The ability of the parents to pay and the amount of the payment shall be determined by the court by appropriate examination.

(5) The guardian ad litem may be compensated on a per-case appointment system or pursuant to a system of multi-case contracts. Regardless of the method of compensation, billing hours and expenses for court-appointed guardian ad litem services shall be submitted to the court for approval and shall be recorded on a written, itemized billing statement signed by the attorney responsible for the case. Billing hours and expenses for guardian ad litem services rendered under a contract for such services shall be submitted to the entity with whom the guardian ad litem contracts in the form and manner prescribed by such entity for approval. Case time for guardian ad litem services shall be scrupulously accounted for by the attorney responsible for the case. Additionally, in the case of a multi-lawyer firm or organization retained for guardian ad litem services, the name of the attorney or attorneys assigned to each guardian ad litem case shall be recorded.

(6) The guardian ad litem shall meet in person with the juvenile for purposes of the consultation required by subdivision (2)(d) of this section unless prohibited or made impracticable by exceptional circumstances, including, but not limited to, situations in which an unreasonable geographical distance is involved between the location of the guardian ad litem and the juvenile. When such exceptional circumstances exist, the guardian ad litem shall attempt such consultation by other reasonable means, including, but not limited to, by telephone or suitable electronic means, if the juvenile is of sufficient age and capacity to participate in such means of communication and there are no other barriers preventing such means of communication. If consultation by telephone

or suitable electronic means is not feasible, the guardian ad litem shall seek direction from the court as to any other acceptable method by which to accomplish consultation required by subdivision (2)(d) of this section.

Source: Laws 1982, LB 787, § 13; Laws 1985, LB 447, § 21; Laws 1990, LB 1222, § 2; Laws 1992, LB 1184, § 12; Laws 1995, LB 305, § 1; Laws 1997, LB 622, § 68; Laws 2008, LB1014, § 39; Laws 2010, LB800, § 21; Laws 2013, LB561, § 17; Laws 2015, LB15, § 2.

Effective date April 30, 2015.

(e) PROSECUTION

43-276 County attorney; city attorney; criminal charge, juvenile court petition, pretrial diversion, mediation, or transfer of case; determination; considerations; referral to community-based resources.

(1) The county attorney or city attorney, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion or mediation, or transfer a case to or from juvenile court, and the juvenile court, county court, or district court in making the determination whether to transfer a case, shall consider: (a) The type of treatment such juvenile would most likely be amenable to; (b) whether there is evidence that the alleged offense included violence; (c) the motivation for the commission of the offense; (d) the age of the juvenile and the ages and circumstances of any others involved in the offense; (e) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court; (f) the best interests of the juvenile; (g) consideration of public safety; (h) consideration of the juvenile's ability to appreciate the nature and seriousness of his or her conduct; (i) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (j) whether the victim agrees to participate in mediation; (k) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (l) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (m) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (n) whether the juvenile is a criminal street gang member; and (o) such other matters as the parties deem relevant to aid in the decision.

(2) Prior to filing a petition alleging that a juvenile is a juvenile as described in subdivision (3)(b) of section 43-247, the county attorney shall make reasonable efforts to refer the juvenile and family to community-based resources available to address the juvenile's behaviors, provide crisis intervention, and maintain the juvenile safely in the home. Failure to describe the efforts required by this subsection shall be a defense to adjudication.

Source: Laws 1981, LB 346, § 32; Laws 1998, LB 1073, § 22; Laws 2000, LB 1167, § 20; Laws 2003, LB 43, § 14; Laws 2008, LB1014, § 40; Laws 2009, LB63, § 30; Laws 2012, LB972, § 2; Laws 2014, LB464, § 17; Laws 2015, LB482, § 5.

Effective date August 30, 2015.

(f) ADJUDICATION PROCEDURES

43-279.01 Juvenile in need of assistance or termination of parental rights; rights of parties; appointment of counsel; court; powers; proceedings.

(1) When the petition alleges the juvenile to be within the provisions of subdivision (3)(a) of section 43-247 or when termination of parental rights is sought pursuant to subdivision (6) of section 43-247 and the parent, custodian, or guardian appears with or without counsel, the court shall inform the parties of the:

(a) Nature of the proceedings and the possible consequences or dispositions pursuant to sections 43-284, 43-285, and 43-288 to 43-295;

(b) Right of the parent to engage counsel of his or her choice at his or her own expense or to have counsel appointed if the parent is unable to afford to hire a lawyer;

(c) Right of a stepparent, custodian, or guardian to engage counsel of his or her choice and, if there are allegations against the stepparent, custodian, or guardian or when the petition is amended to include such allegations, to have counsel appointed if the stepparent, custodian, or guardian is unable to afford to hire a lawyer;

(d) Right to remain silent as to any matter of inquiry if the testimony sought to be elicited might tend to prove the party guilty of any crime;

(e) Right to confront and cross-examine witnesses;

(f) Right to testify and to compel other witnesses to attend and testify;

(g) Right to a speedy adjudication hearing; and

(h) Right to appeal and have a transcript or record of the proceedings for such purpose.

(2) The court shall have the discretion as to whether or not to appoint counsel for a person who is not a party to the proceeding. If counsel is appointed, failure of the party to maintain contact with his or her court-appointed counsel or to keep such counsel advised of the party's current address may result in the counsel being discharged by the court.

(3) After giving the parties the information prescribed in subsection (1) of this section, the court may accept an in-court admission, an answer of no contest, or a denial from any parent, custodian, or guardian as to all or any part of the allegations in the petition. The court shall ascertain a factual basis for an admission or an answer of no contest.

(4) In the case of a denial, the court shall allow a reasonable time for preparation if needed and then proceed to determine the question of whether the juvenile falls under the provisions of section 43-247 as alleged. After hearing the evidence, the court shall make a finding and adjudication to be entered on the records of the court as to whether the allegations in the petition have been proven by a preponderance of the evidence in cases under subdivision (3)(a) of section 43-247 or by clear and convincing evidence in proceedings to terminate parental rights. The court shall inquire as to whether any party believes an Indian child is involved in the proceedings prior to the advisement of rights pursuant to subsection (1) of this section. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

(5) If the court shall find that the allegations of the petition or motion have not been proven by the requisite standard of proof, it shall dismiss the case or motion. If the court sustains the petition or motion, it shall allow a reasonable time for preparation if needed and then proceed to inquire into the matter of the proper disposition to be made of the juvenile.

Source: Laws 1985, LB 447, § 23; Laws 1989, LB 22, § 3; Laws 2013, LB561, § 18; Laws 2015, LB566, § 1.
Effective date August 30, 2015.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

(g) DISPOSITION

43-284.02 Ward of the department; appointment of guardian; payments allowed.

The Department of Health and Human Services may make payments as needed on behalf of a child who has been a ward of the department after the appointment of a guardian for the child. Such payments to the guardian may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. All such payments shall terminate on or before the child's nineteenth birthday unless the child is eligible for extended guardianship assistance and medical care from the department pursuant to section 43-4511. The child under guardianship shall be a child for whom the guardianship would not be possible without the financial aid provided under this section.

The Department of Health and Human Services shall adopt and promulgate rules and regulations for the administration of this section.

Source: Laws 1986, LB 600, § 14; Laws 1996, LB 1044, § 132; Laws 2007, LB296, § 108; Laws 2014, LB853, § 22; Laws 2014, LB908, § 4; Laws 2015, LB243, § 10.
Operative date May 28, 2015.

43-285 Care of juvenile; duties; authority; placement plan and report; when; independence hearing; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the legal custody and care of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Any such association and the department shall be responsible for applying for any health insurance available to the juvenile, including, but not limited to, medical assistance under the Medical Assistance Act. Such custody and care shall not include the guardianship of any estate of the juvenile.

(2)(a) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3)(a) or (c) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care,

placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan.

(b) The department shall include in the plan for a child who is sixteen years of age or older and subject to the legal care and custody of the department a written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible children, the Young Adult Bridge to Independence Act. The juvenile court shall provide a copy of the plan to all interested parties before the hearing. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the child's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the child in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(c) The last court hearing before jurisdiction pursuant to subdivision (3)(a) of section 43-247 is terminated for a child who is sixteen years of age or older shall be called the independence hearing. In addition to other matters and requirements to be addressed at this hearing, the independence hearing shall address the child's future goals and plans and access to services and support for the transition from foster care to adulthood consistent with section 43-1311.03 and the Young Adult Bridge to Independence Act. The child shall not be required to attend the independence hearing, but efforts shall be made to encourage and enable the child's attendance if the child wishes to attend, including scheduling the hearing at a time that permits the child's attendance. An independence coordinator as provided in section 43-4506 shall attend the hearing if reasonably practicable, but the department is not required to have legal counsel present. At the independence hearing, the court shall advise the child about the bridge to independence program, including, if applicable, the right of young adults in the bridge to independence program to request a court-appointed, client-directed attorney under subsection (1) of section 43-4510 and the benefits and role of such attorney and to request additional permanency review hearings in the bridge to independence program under subsection (5) of section 43-4508 and how to request such a hearing. The court shall also advise the child, if applicable, of the rights he or she is giving up if he or she chooses not to participate in the bridge to independence program and the option to enter such program at any time between nineteen and twenty-one years of age if the child meets the eligibility requirements of section 43-4504. The department shall present information to the court regarding other community resources that may benefit the child, specifically information regarding state programs established pursuant to 42 U.S.C. 677.

(3) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. Every six months, the report shall provide an updated statement regarding the eligibility of the juvenile for health insurance, including, but not limited to, medical

assistance under the Medical Assistance Act. The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with the Nebraska Juvenile Code.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the Foster Care Review Office or the designated local foster care review board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(7) Any written findings or recommendations of the Foster Care Review Office or the designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) The executive director and any agent or employee of the Foster Care Review Office or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

Source: Laws 1981, LB 346, § 41; Laws 1982, LB 787, § 17; Laws 1984, LB 845, § 31; Laws 1985, LB 447, § 25; Laws 1989, LB 182, § 12; Laws 1990, LB 1222, § 3; Laws 1992, LB 1184, § 14; Laws 1993, LB 103, § 1; Laws 1996, LB 1044, § 133; Laws 1998, LB 1041, § 26; Laws 2010, LB800, § 23; Laws 2011, LB177, § 1; Laws 2011, LB648, § 1; Laws 2012, LB998, § 2; Laws 2013, LB216, § 15; Laws 2013, LB269, § 1; Laws 2013, LB561, § 22; Laws 2014, LB464, § 19; Laws 2014, LB853, § 23; Laws 2014, LB908, § 5; Laws 2015, LB243, § 11.

Operative date May 28, 2015.

Cross References

Foster Care Review Act, see section 43-1318.

Medical Assistance Act, see section 68-901.

Young Adult Bridge to Independence Act, see section 43-4501.

43-297.01 Office of Probation Administration; duties; initial placement and level of care; court order; review; notice of placement change; hearing; exception; foster care placement; participation in proceedings.

(1) Following an adjudication, whenever any juvenile is placed on juvenile probation subject to the supervision of a probation officer, the Office of Probation Administration is deemed to have placement and care responsibility for the juvenile.

(2) The court shall order the initial placement and level of care for the juvenile placed on juvenile probation. Prior to determining the placement and level of care for a juvenile, the court may solicit a recommendation from the Office of Probation Administration. The status of each juvenile placed out-of-home shall be reviewed periodically, but not less than once every six months by the court in person, by video, or telephonically. Periodic reviews shall assess the juvenile's safety and the continued necessity and appropriateness of placement, ensure case plan compliance, and monitor the juvenile's progress. The court shall determine whether an out-of-home placement made by the office is in the best interests of the juvenile. The office shall provide all interested parties with a copy of any report filed with the court by the office pursuant to this subsection.

(3) The Office of Probation Administration may transition a juvenile to a less restrictive placement or to a placement which has the same level of restriction as the current placement. In order to make a placement change under this section, the office shall file a notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the change of placement. The court, on its own motion, or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed pending the outcome of the hearing on the objection.

(4) The Office of Probation Administration may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The office shall provide all interested parties with a copy of any report filed with the court by the office pursuant to this subsection.

(5) Whenever the court places a juvenile in a foster care placement as defined in section 43-1301, the Foster Care Review Office or designated local foster care review board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(6) Any written findings or recommendations of the Foster Care Review Office or the designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(7) Nothing in this section prevents the court on an ex parte basis from approving an immediate change in placement upon good cause shown.

Source: Laws 2014, LB464, § 23; Laws 2015, LB265, § 5.
Operative date August 30, 2015.

(i) MISCELLANEOUS PROVISIONS

43-2,108 Juvenile court; files; how kept; certain reports and records not open to inspection without order of court; exceptions.

(1) The juvenile court judge shall keep a minute book in which he or she shall enter minutes of all proceedings of the court in each case, including appearances, findings, orders, decrees, and judgments, and any evidence which he or she feels it is necessary and proper to record. Juvenile court legal records shall be deposited in files and shall include the petition, summons, notice, certificates or receipts of mailing, minutes of the court, findings, orders, decrees, judgments, and motions.

(2) Except as provided in subsections (3), (4), and (5) of this section, the medical, psychological, psychiatric, and social welfare reports and the records of juvenile probation officers as they relate to individual proceedings in the juvenile court shall not be open to inspection, without order of the court. Such records shall be made available to a district court of this state or the District Court of the United States on the order of a judge thereof for the confidential use of such judge or his or her probation officer as to matters pending before such court but shall not be made available to parties or their counsel; and such district court records shall be made available to a county court or separate juvenile court upon request of the county judge or separate juvenile judge for the confidential use of such judge and his or her probation officer as to matters pending before such court, but shall not be made available by such judge to the parties or their counsel.

(3) As used in this section, confidential record information means all docket records, other than the pleadings, orders, decrees, and judgments; case files and records; reports and records of probation officers; and information supplied to the court of jurisdiction in such cases by any individual or any public or private institution, agency, facility, or clinic, which is compiled by, produced by, and in the possession of any court. In all cases under subdivision (3)(a) of section 43-247, access to all confidential record information in such cases shall be granted only as follows: (a) The court of jurisdiction may, subject to applicable federal and state regulations, disseminate such confidential record information to any individual, or public or private agency, institution, facility, or clinic which is providing services directly to the juvenile and such juvenile's parents or guardian and his or her immediate family who are the subject of such record information; (b) the court of jurisdiction may disseminate such confidential record information, with the consent of persons who are subjects of such information, or by order of such court after showing of good cause, to any law enforcement agency upon such agency's specific request for such agency's exclusive use in the investigation of any protective service case or investigation of allegations under subdivision (3)(a) of section 43-247, regarding the juvenile or such juvenile's immediate family, who are the subject of such investigation; and (c) the court of jurisdiction may disseminate such confidential record information to any court, which has jurisdiction of the juvenile who is the subject of such information upon such court's request.

(4) The court shall provide copies of predispositional reports and evaluations of the juvenile to the juvenile's attorney and the county attorney or city attorney prior to any hearing in which the report or evaluation will be relied upon.

(5) In all cases under sections 43-246.01 and 43-247, the court or the probation officer shall disseminate confidential record information to (a) the office of Inspector General of Nebraska Child Welfare upon request for the exclusive use in an investigation pursuant to the Office of Inspector General of Nebraska Child Welfare Act and (b) the Foster Care Review Office pursuant to the Foster Care Review Act. Nothing in this subsection shall prevent the notification of death or serious injury of a juvenile to the Inspector General of Nebraska Child Welfare pursuant to section 43-4318 as soon as reasonably possible after the Office of Probation Administration learns of such death or serious injury.

(6) Nothing in subsections (3) and (5) of this section shall be construed to restrict the dissemination of confidential record information between any individual or public or private agency, institute, facility, or clinic, except any such confidential record information disseminated by the court of jurisdiction pursuant to this section shall be for the exclusive and private use of those to whom it was released and shall not be disseminated further without order of such court.

(7)(a) Any records concerning a juvenile court petition filed pursuant to subdivision (3)(c) of section 43-247 shall remain confidential except as may be provided otherwise by law. Such records shall be accessible to (i) the juvenile except as provided in subdivision (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's parent or guardian, and (iv) persons authorized by an order of a judge or court.

(b) Upon application by the county attorney or by the director of the facility where the juvenile is placed and upon a showing of good cause therefor, a judge of the juvenile court having jurisdiction over the juvenile or of the county where the facility is located may order that the records shall not be made available to the juvenile if, in the judgment of the court, the availability of such records to the juvenile will adversely affect the juvenile's mental state and the treatment thereof.

Source: Laws 1981, LB 346, § 65; Laws 1997, LB 622, § 73; Laws 2014, LB464, § 25; Laws 2015, LB347, § 2.
Effective date August 30, 2015.

Cross References

Foster Care Review Act, see section 43-1318.

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

43-2,108.05 Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.

(1) If the court orders the record of a juvenile sealed pursuant to section 43-2,108.04, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the offense, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, be deemed never to have occurred;

(b) Send notice of the order to seal the record (i) to the Nebraska Commission on Law Enforcement and Criminal Justice, (ii) if the record includes impoundment or prohibition to obtain a license or permit pursuant to section 43-287, to the Department of Motor Vehicles, (iii) if the juvenile whose record has been ordered sealed was a ward of the state at the time the proceeding was initiated or if the Department of Health and Human Services was a party in the proceeding, to such department, and (iv) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all notified under subdivision (1)(b) of this section to seal all records pertaining to the offense;

(d) If the case was transferred from district court to juvenile court or was transferred under section 43-282, send notice of the order to seal the record to the transferring court; and

(e) Explain to the juvenile what sealing the record means verbally if the juvenile is present in the court at the time the court issues the sealing order or by written notice sent by regular mail to the juvenile's last-known address if the juvenile is not present in the court at the time the court issues the sealing order.

(2) The effect of having a record sealed under section 43-2,108.04 is that thereafter no person is allowed to release any information concerning such record, except as provided by this section. After a record is sealed, the person whose record was sealed can respond to any public inquiry as if the offense resulting in such record never occurred. A government agency and any other public office or agency shall reply to any public inquiry that no information exists regarding a sealed record. Except as provided in subsection (3) of this section, an order to seal the record applies to every government agency and any other public office or agency that has a record relating to the offense, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Upon the written request of a person whose record has been sealed and the presentation of a copy of such order, a government agency or any other public office or agency shall seal all records pertaining to the offense.

(3) A sealed record is accessible to law enforcement officers, county attorneys, and city attorneys in the investigation, prosecution, and sentencing of crimes, to the sentencing judge in the sentencing of criminal defendants, to a judge making a determination whether to transfer a case to or from juvenile court, and to any attorney representing the subject of the sealed record. Inspection of records that have been ordered sealed under section 43-2,108.04 may be made by the following persons or for the following purposes:

(a) By the court or by any person allowed to inspect such records by an order of the court for good cause shown;

(b) By the court, city attorney, or county attorney for purposes of collection of any remaining parental support or obligation balances under section 43-290;

(c) By the Nebraska Probation System for purposes of juvenile intake services, for presentence and other probation investigations, and for the direct supervision of persons placed on probation and by the Department of Correctional Services, the Office of Juvenile Services, a juvenile assessment center, a criminal detention facility, a juvenile detention facility, or a staff secure juvenile facility, for an individual committed to it, placed with it, or under its care;

(d) By the Department of Health and Human Services for purposes of juvenile intake services, the preparation of case plans and reports, the prepara-

tion of evaluations, compliance with federal reporting requirements, or the supervision and protection of persons placed with the department or for licensing or certification purposes under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children’s Residential Facilities and Placing Licensure Act;

(e) Upon application, by the person who is the subject of the sealed record and by persons authorized by the person who is the subject of the sealed record who are named in that application;

(f) At the request of a party in a civil action that is based on a case that has a sealed record, as needed for the civil action. The party also may copy the sealed record as needed for the civil action. The sealed record shall be used solely in the civil action and is otherwise confidential and subject to this section;

(g) By persons engaged in bona fide research, with the permission of the court, only if the research results in no disclosure of the person’s identity and protects the confidentiality of the sealed record; or

(h) By a law enforcement agency if a person whose record has been sealed applies for employment with the law enforcement agency.

(4) Nothing in this section prohibits the Department of Health and Human Services from releasing information from sealed records in the performance of its duties with respect to the supervision and protection of persons served by the department.

(5) In any application for employment, bonding, license, education, or other right or privilege, any appearance as a witness, or any other public inquiry, a person cannot be questioned with respect to any offense for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the offense never occurred. Applications for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record. Employers shall not ask if an applicant has had a record sealed. The Department of Labor shall develop a link on the department’s web site to inform employers that employers cannot ask if an applicant had a record sealed and that an application for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record.

(6) Any person who violates this section may be held in contempt of court.

Source: Laws 2010, LB800, § 30; Laws 2011, LB463, § 10; Laws 2013, LB265, § 31; Laws 2013, LB561, § 24; Laws 2015, LB265, § 6. Operative date August 30, 2015.

Cross References

Child Care Licensing Act, see section 71-1908.
Children’s Residential Facilities and Placing Licensure Act, see section 71-1924.

(k) CITATION AND CONSTRUCTION OF CODE

43-2,129 Code, how cited.

Sections 43-245 to 43-2,129 shall be known and may be cited as the Nebraska Juvenile Code.

Source: Laws 1981, LB 346, § 85; Laws 1985, LB 447, § 35; Laws 1989, LB 182, § 19; Laws 1994, LB 1106, § 8; Laws 1997, LB 622,

§ 74; Laws 1998, LB 1041, § 31; Laws 1998, LB 1073, § 27; Laws 2000, LB 1167, § 23; Laws 2003, LB 43, § 16; Laws 2006, LB 1115, § 32; Laws 2008, LB1014, § 42; Laws 2010, LB800, § 31; Laws 2011, LB463, § 11; Laws 2013, LB561, § 25; Laws 2014, LB464, § 26; Laws 2015, LB482, § 6.
Effective date August 30, 2015.

**ARTICLE 4
OFFICE OF JUVENILE SERVICES**

Section

- 43-412. Commitment to Office of Juvenile Services; discharge of juvenile; effect of discharge; notice of discharge.
- 43-413. Repealed. Laws 2015, LB 605, § 112.

43-412 Commitment to Office of Juvenile Services; discharge of juvenile; effect of discharge; notice of discharge.

(1) Every juvenile committed to the Office of Juvenile Services pursuant to the Nebraska Juvenile Code shall remain committed until he or she attains the age of nineteen or is legally discharged.

(2) Upon attainment of the age of nineteen or absent a continuing order of intensive supervised probation, discharge of any juvenile pursuant to the rules and regulations shall be a complete release from all penalties incurred by conviction or adjudication of the offense for which he or she was committed.

(3) The Office of Juvenile Services shall provide the committing court, Office of Probation Administration, county attorney, defense attorney, if any, and guardian ad litem, if any, with written notification of the juvenile’s discharge within thirty days prior to a juvenile being discharged from the care and custody of the office.

Source: Laws 1901, c. 51, § 11, p. 407; Laws 1903, c. 69, § 2, p. 369; R.S.1913, § 7379; C.S.1922, § 7038; C.S.1929, § 83-1109; R.S. 1943, § 83-472; Laws 1969, c. 817, § 80, p. 3111; Laws 1974, LB 992, § 1; Laws 1993, LB 31, § 44; Laws 1994, LB 988, § 35; Laws 1996, LB 1044, § 956; R.S.Supp.,1996, § 83-472; Laws 1998, LB 1073, § 44; Laws 2011, LB463, § 12; Laws 2013, LB561, § 32; Laws 2015, LB605, § 75.
Effective date August 30, 2015.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

43-413 Repealed. Laws 2015, LB 605, § 112.

**ARTICLE 5
ASSISTANCE FOR CERTAIN CHILDREN**

Section

- 43-512. Application for assistance; procedure; maximum monthly assistance; payment; transitional benefits; terms, defined.
- 43-512.04. Child support or medical support; separate action allowed; procedure; presumption; decree; contempt.

43-512 Application for assistance; procedure; maximum monthly assistance; payment; transitional benefits; terms, defined.

(1) Any dependent child as defined in section 43-504 or any relative or eligible caretaker of such a dependent child may file with the Department of Health and Human Services a written application for financial assistance for such child on forms furnished by the department.

(2) The department, through its agents and employees, shall make such investigation pursuant to the application as it deems necessary or as may be required by the county attorney or authorized attorney. If the investigation or the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the finding of such investigation and a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3) The department shall make a finding as to whether the application referred to in subsection (1) of this section should be allowed or denied. If the department finds that the application should be allowed, the department shall further find the amount of monthly assistance which should be paid with reference to such dependent child. Except as may be otherwise provided, payments shall be made by unit size and shall be consistent with subdivision (1)(p) of section 68-1713. Beginning on August 30, 2015, the maximum payment level for monthly assistance shall be fifty-five percent of the standard of need described in section 43-513.

No payments shall be made for amounts totaling less than ten dollars per month except in the recovery of overpayments.

(4) The amount which shall be paid as assistance with respect to a dependent child shall be based in each case upon the conditions disclosed by the investigation made by the department. An appeal shall lie from the finding made in each case to the chief executive officer of the department or his or her designated representative. Such appeal may be taken by any taxpayer or by any relative of such child. Proceedings for and upon appeal shall be conducted in the same manner as provided for in section 68-1016.

(5)(a) For the purpose of preventing dependency, the department shall adopt and promulgate rules and regulations providing for services to former and potential recipients of aid to dependent children and medical assistance benefits. The department shall adopt and promulgate rules and regulations establishing programs and cooperating with programs of work incentive, work experience, job training, and education. The provisions of this section with regard to determination of need, amount of payment, maximum payment, and method of payment shall not be applicable to families or children included in such programs. Income and assets described in section 68-1201 shall not be included in determination of need under this section.

(b) If a recipient of aid to dependent children becomes ineligible for aid to dependent children as a result of increased hours of employment or increased income from employment after having participated in any of the programs established pursuant to subdivision (a) of this subsection, the recipient may be eligible for the following benefits, as provided in rules and regulations of the department in accordance with sections 402, 417, and 1925 of the federal Social Security Act, as amended, Public Law 100-485, in order to help the family during the transition from public assistance to independence:

(i) An ongoing transitional payment that is intended to meet the family's ongoing basic needs which may include food, clothing, shelter, utilities, house-

hold goods, personal care items, and general incidental expenses during the five months following the time the family becomes ineligible for assistance under the aid to dependent children program, if the family's earned income is at or below one hundred eighty-five percent of the federal poverty level at the time the family becomes ineligible for the aid to dependent children program. Payments shall be made in five monthly payments, each equal to one-fifth of the aid to dependent children payment standard for the family's size at the time the family becomes ineligible for the aid to dependent children program. If during the five-month period, (A) the family's earnings exceed one hundred eighty-five percent of the federal poverty level, (B) the family members are no longer working, (C) the family ceases to be Nebraska residents, (D) there is no longer a minor child in the family's household, or (E) the family again becomes eligible for the aid to dependent children program, the family shall become ineligible for any remaining transitional benefits under this subdivision;

(ii) Child care as provided in subdivision (1)(c) of section 68-1724; and

(iii) Except as may be provided in accordance with subsection (2) of section 68-1713 and subdivision (1)(c) of section 68-1724, medical assistance for up to twelve months after the month the recipient becomes employed and is no longer eligible for aid to dependent children.

(6) For purposes of sections 43-512 to 43-512.18:

(a) Authorized attorney shall mean an attorney, employed by the county subject to the approval of the county board, employed by the department, or appointed by the court, who is authorized to investigate and prosecute child, spousal, and medical support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(b) Child support shall be defined as provided in section 43-1705;

(c) Medical support shall include all expenses associated with the birth of a child, cash medical support as defined in section 42-369, health care coverage as defined in section 44-3,144, and medical and hospital insurance coverage or membership in a health maintenance organization or preferred provider organization;

(d) Spousal support shall be defined as provided in section 43-1715;

(e) State Disbursement Unit shall be defined as provided in section 43-3341; and

(f) Support shall be defined as provided in section 43-3313.

Source: Laws 1935, Spec. Sess., c. 30, § 12, p. 185; C.S.Supp.,1941, § 43-512; R.S.1943, § 43-512; Laws 1945, c. 104, § 1, p. 338; Laws 1947, c. 158, § 1, p. 436; Laws 1951, c. 79, § 5, p. 240; Laws 1951, c. 130, § 1, p. 549; Laws 1953, c. 233, § 1, p. 809; Laws 1959, c. 191, § 1, p. 694; Laws 1967, c. 252, § 1, p. 671; Laws 1971, LB 639, § 1; Laws 1974, LB 834, § 1; Laws 1975, LB 192, § 1; Laws 1977, LB 179, § 1; Laws 1977, LB 425, § 1; Laws 1980, LB 789, § 1; Laws 1982, LB 522, § 13; Laws 1982, LB 942, § 3; Laws 1983, LB 371, § 12; Laws 1985, Second Spec. Sess., LB 7, § 65; Laws 1987, LB 573, § 2; Laws 1988, LB 518, § 1; Laws 1989, LB 362, § 3; Laws 1990, LB 536, § 1; Laws 1991, LB 457, § 5; Laws 1991, LB 715, § 7; Laws 1994, LB 1224, § 50; Laws 1995, LB 455, § 2; Laws 1996, LB 1044, § 156; Laws 1997, LB 864, § 4; Laws 2000, LB 972, § 17; Laws 2007,

LB296, § 115; Laws 2007, LB351, § 2; Laws 2009, LB288, § 7; Laws 2014, LB359, § 2; Laws 2015, LB607, § 1.
Operative date August 30, 2015.

43-512.04 Child support or medical support; separate action allowed; procedure; presumption; decree; contempt.

(1) An action for child support or medical support may be brought separate and apart from any action for dissolution of marriage. The complaint initiating the action shall be filed with the clerk of the district court and may be heard by the county court or the district court as provided in section 25-2740. Such action for support may be filed on behalf of a child:

(a) Whose paternity has been established (i) by prior judicial order in this state, (ii) by a prior determination of paternity made by any other state or by an Indian tribe as described in subsection (1) of section 43-1406, or (iii) by the marriage of his or her parents as described in section 42-377 or subsection (2) of section 43-1406; or

(b) Whose paternity is presumed as described in section 43-1409 or subsection (2) of section 43-1415.

(2) The father, not having entered into a judicially approved settlement or being in default in the performance of the same, may be made a respondent in such action. The mother of the child may also be made a respondent in such an action. Such action shall be commenced by a complaint of the mother of the child, the father of the child whose paternity has been established, the guardian or next friend of the child, the county attorney, or an authorized attorney.

(3) The complaint shall set forth the basis on which paternity was previously established or presumed, if the respondent is the father, and the fact of nonsupport and shall ask that the father, the mother, or both parents be ordered to provide for the support of the child. Summons shall issue against the father, the mother, or both parents and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county. The method of trial shall be the same as in actions formerly cognizable in equity, and jurisdiction to hear and determine such actions for support is hereby vested in the district court of the district or the county court of the county where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act if the child is not domiciled or found in Nebraska, where the parent of the child is domiciled.

(4) In such proceeding, if the defendant is the presumed father as described in subdivision (1)(b) of this section, the court shall make a finding whether or not the presumption of paternity has been rebutted. The presumption of paternity created by acknowledgment as described in section 43-1409 may be rebutted as part of an equitable proceeding to establish support by genetic testing results which exclude the alleged father as being the biological father of the child. A court in such a proceeding may order genetic testing as provided in sections 43-1414 to 43-1418.

(5) If the court finds that the father, the mother, or both parents have failed adequately to support the child, the court shall issue a decree directing him, her, or them to do so, specifying the amount of such support, the manner in which it shall be furnished, and the amount, if any, of any court costs and attorney's fees to be paid by the father, the mother, or both parents. Income withholding shall be ordered pursuant to the Income Withholding for Child

Support Act. The court may require the furnishing of bond to insure the performance of the decree in the same manner as is provided for in section 42-358.05 or 43-1405. Failure on the part of the defendant to perform the terms of such decree shall constitute contempt of court and may be dealt with in the same manner as other contempts. The court may also order medical support and the payment of expenses as described in section 43-1407.

Source: Laws 1976, LB 926, § 6; Laws 1991, LB 457, § 8; Laws 1994, LB 1224, § 52; Laws 1996, LB 1296, § 22; Laws 1997, LB 229, § 37; Laws 2004, LB 1207, § 38; Laws 2015, LB566, § 2.
Effective date August 30, 2015.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

Uniform Interstate Family Support Act, see section 42-701.

ARTICLE 9

CHILDREN COMMITTED TO THE DEPARTMENT

Section

43-905. Legal custody; care; placement; duties of department; contracts; payment for maintenance.

43-905 Legal custody; care; placement; duties of department; contracts; payment for maintenance.

(1) The Department of Health and Human Services shall have legal custody of all children committed to it. The department shall afford temporary care and shall use special diligence to provide suitable homes for such children. The department shall make reasonable efforts to accomplish joint-sibling placement or sibling visitation or ongoing interaction between siblings as provided in section 43-1311.02. The department is authorized to place such children in suitable families for adoption, foster care, or guardianship or, in the discretion of the department, on a written contract.

(2) The contract shall provide (a) for the children's education in the public schools or otherwise, (b) for teaching them some useful occupation, and (c) for kind and proper treatment as members of the family in which they are placed.

(3) Whenever any child who has been committed to the department becomes self-supporting, the department shall declare that fact and the legal custody and care of the department shall cease. Thereafter the child shall be entitled to his or her own earnings. Legal custody and care of and services by the department shall never extend beyond the age of majority, except that (a) services by the department to a child shall continue until the child reaches the age of twenty-one if the child is in the bridge to independence program as provided in the Young Adult Bridge to Independence Act and (b) coverage for health care and related services under medical assistance in accordance with section 68-911 shall be extended as provided under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013, for medicaid coverage for individuals under twenty-six years of age as allowed pursuant to such act.

(4) Whenever the parents of any ward, whose parental rights have not been terminated, have become able to support and educate their child, the department shall restore the child to his or her parents if the home of such parents

would be a suitable home. The legal custody and care of the department shall then cease.

(5) Whenever permanent free homes for the children cannot be obtained, the department may provide subsidies to adoptive and guardianship families subject to a hearing and court approval. The department may also provide and pay for the maintenance of the children in foster care, in boarding homes, or in institutions for care of children.

Source: Laws 1911, c. 62, § 5, p. 274; R.S.1913, § 7229; C.S.1922, § 6886; C.S.1929, § 83-504; Laws 1937, c. 202, § 1, p. 826; C.S.Supp.,1941, § 83-504; R.S.1943, § 83-243; Laws 1945, c. 246, § 1, p. 779; Laws 1951, c. 325, § 1, p. 1097; Laws 1953, c. 344, § 1, p. 1118; Laws 1957, c. 387, § 1, p. 1345; Laws 1959, c. 443, § 1, p. 1491; Laws 1961, c. 415, § 32, p. 1261; Laws 1965, c. 245, § 1, p. 695; Laws 1967, c. 248, § 4, p. 657; Laws 1969, c. 349, § 1, p. 1219; Laws 1977, LB 312, § 5; Laws 1978, LB 732, § 1; Laws 1992, LB 169, § 1; Laws 1996, LB 1044, § 185; Laws 1996, LB 1155, § 10; Laws 1998, LB 1073, § 29; Laws 2007, LB296, § 124; Laws 2011, LB177, § 2; Laws 2013, LB216, § 16; Laws 2013, LB269, § 2; Laws 2014, LB853, § 24; Laws 2014, LB908, § 6; Laws 2015, LB243, § 12.
Operative date May 28, 2015.

Cross References

Foster Parent Liability and Property Damage Fund, see section 43-1320.

Young Adult Bridge to Independence Act, see section 43-4501.

**ARTICLE 13
FOSTER CARE**

(a) FOSTER CARE REVIEW ACT

| | |
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| Section | |
| 43-1301. | Terms, defined. |
| 43-1302. | Foster Care Review Office; established; purpose; Foster Care Advisory Committee; created; members; terms; meetings; duties; expenses; executive director; duties. |
| 43-1303. | Office; registry; reports required; foster care file audit case reviews; rules and regulations; local board; report; court; report; visitation of facilities; executive director; powers and duties. |
| 43-1304. | Local foster care review boards; members; powers and duties. |
| 43-1308. | Local board; powers and duties. |
| 43-1309. | Records; release; when. |
| 43-1311.01. | Child removed from home; notice to noncustodial parent and certain relatives; when; information provided; department; duties. |
| 43-1311.02. | Placement of child and siblings; sibling visitation or ongoing interaction; motions authorized; court review; department; duties. |
| 43-1312.01. | Placement of child; order granting guardianship; court retain jurisdiction over child; termination of guardianship; when; effect of guardianship. |
| 43-1313. | Review of dispositional order; when; procedure. |
| 43-1318. | Act, how cited. |

(b) TRANSITION OF EMPLOYEES

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| 43-1322. | Out-of-Home Data Pilot Project; created; purpose; termination; Out-of-Home Data Pilot Project Advisory Group; created; members; duties; report. |
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(a) FOSTER CARE REVIEW ACT

43-1301 Terms, defined.

For purposes of the Foster Care Review Act, unless the context otherwise requires:

(1) Local board means a local foster care review board created pursuant to section 43-1304;

(2) Office means the Foster Care Review Office created pursuant to section 43-1302;

(3) Foster care facility means any foster family home as defined in section 71-1901, residential child-caring agency as defined in section 71-1926, public agency, private agency, or any other person or entity receiving and caring for foster children;

(4) Foster care placements means (a) all types of placements of juveniles described in sections 43-245 and 43-247, (b) all types of placements of neglected, dependent, or delinquent children, including those made by the Department of Health and Human Services, by the court, by parents, or by third parties, (c) all types of placements of children who have been voluntarily relinquished pursuant to section 43-106.01 to the department or any child-placing agency as defined in section 71-1926 licensed by the department, and (d) all types of placements that are considered to be a trial home visit, including those made directly by the department or office;

(5) Person or court in charge of the child means (a) the Department of Health and Human Services, an association, or an individual who has been made the guardian of a neglected, dependent, or delinquent child by the court and has the responsibility of the care of the child and has the authority by and with the assent of the court to place such a child in a suitable family home or institution or has been entrusted with the care of the child by a voluntary placement made by a parent or legal guardian, (b) the court which has jurisdiction over the child, or (c) the entity having jurisdiction over the child pursuant to the Nebraska Indian Child Welfare Act;

(6) Voluntary placement means the placement by a parent or legal guardian who relinquishes the possession and care of a child to a third party, individual, or agency;

(7) Family unit means the social unit consisting of the foster child and the parent or parents or any person in the relationship of a parent, including a grandparent, and any siblings with whom the foster child legally resided prior to placement in foster care, except that for purposes of potential sibling placement, the child's family unit also includes the child's siblings even if the child has not resided with such siblings prior to placement in foster care;

(8) Residential child-caring agency has the definition found in section 71-1926;

(9) Child-placing agency has the definition found in section 71-1926;

(10) Siblings means biological siblings and legal siblings, including, but not limited to, half-siblings and stepsiblings; and

(11) Trial home visit means a placement of a court-involved juvenile who goes from a foster care placement back to his or her legal parent or parents or guardian but remains as a ward of the state.

Source: Laws 1982, LB 714, § 1; Laws 1985, LB 255, § 40; Laws 1985, LB 447, § 36; Laws 1987, LB 239, § 1; Laws 1990, LB 1222, § 4;

Laws 1996, LB 1044, § 194; Laws 1997, LB 307, § 75; Laws 2011, LB177, § 3; Laws 2012, LB998, § 3; Laws 2013, LB265, § 32; Laws 2015, LB265, § 7.

Operative date August 30, 2015.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-1302 Foster Care Review Office; established; purpose; Foster Care Advisory Committee; created; members; terms; meetings; duties; expenses; executive director; duties.

(1) The Foster Care Review Office is hereby established. The purpose of the office is to provide information and direct reporting to the courts, the Department of Health and Human Services, the Office of Probation Administration, and the Legislature regarding the foster care system in Nebraska; to provide oversight of the foster care system; and to make recommendations regarding foster care policy to the Legislature. The executive director of the Foster Care Review Office shall provide information and reporting services, provide analysis of information obtained, and oversee foster care file audit case reviews and tracking of cases of children in the foster care system. The executive director of the office shall, through information analysis and with the assistance of the Foster Care Advisory Committee, (a) determine key issues of the foster care system and ways to resolve the issues and to otherwise improve the system and (b) make policy recommendations.

(2)(a) The Foster Care Advisory Committee is created. The committee shall have five members appointed by the Governor. Three members shall be local board members, one member shall have data analysis experience, and one member shall be a resident of the state who is representative of the public at large. The members shall have no pecuniary interest in the foster care system and shall not be employed by the office, the Department of Health and Human Services, a county, a residential child-caring agency, a child-placing agency, or a court.

(b) The Health and Human Services Committee of the Legislature shall hold a confirmation hearing for the appointees, and the appointments shall be subject to confirmation by the Legislature, except that the members appointed while the Legislature is not in session shall serve until the next session of the Legislature, at which time a majority of the members of the Legislature shall approve or disapprove of the appointments.

(c) The terms of the members shall be for three years, except that the Governor shall designate two of the initial appointees to serve initial terms ending on March 1, 2014, and three of the initial appointees to serve initial terms ending on March 1, 2015. The Governor shall make the initial appointments within thirty days after July 1, 2012. Members shall not serve more than two consecutive terms, except that members shall serve until their successors have been appointed and qualified. The Governor shall appoint members to fill vacancies from the same category as the vacated position to serve for the remainder of the unexpired term.

(d) The Foster Care Advisory Committee shall meet at least four times each calendar year. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the committee. Members shall

be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(e) The duties of the Foster Care Advisory Committee are to:

(i) Hire and fire an executive director for the office who has training and experience in foster care; and

(ii) Support and facilitate the work of the office, including the tracking of children in foster care and reviewing foster care file audit case reviews.

(3) The executive director of the office shall hire, fire, and supervise office staff and shall be responsible for the duties of the office as provided by law, including the annual report and other reporting, review, tracking, data collection and analysis, and oversight and training of local boards.

Source: Laws 1982, LB 714, § 2; Laws 1987, LB 239, § 2; Laws 1990, LB 1222, § 5; Laws 2005, LB 761, § 1; Laws 2007, LB463, § 1133; Laws 2009, LB679, § 1; Laws 2012, LB998, § 4; Laws 2013, LB265, § 33; Laws 2015, LB265, § 8.

Operative date August 30, 2015.

43-1303 Office; registry; reports required; foster care file audit case reviews; rules and regulations; local board; report; court; report; visitation of facilities; executive director; powers and duties.

(1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a weekly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such report shall consist of identifying information, placement information, the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312, and information on whether any such child was a person immune from criminal prosecution under subsection (5) of section 28-801 or was considered a trafficking victim as defined in subdivision (16) of section 28-830. The department, the Office of Probation Administration, and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, date of birth, gender, race, religion, and ethnicity;

(b) Identification information for parents and stepparents, including name, address, and status of parental rights;

(c) Placement information, including initial placement date, current placement date, and the name and address of the foster care placement;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child; and

(f) Case worker, probation officer, or person providing direct case management or supervision functions.

(2)(a) The Foster Care Review Office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

(i) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care placements. Such reports shall include, but not be limited to, (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) Accumulation of data and the making of quarterly reports regarding the children in foster care placements;

(vi) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(vii) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4) The office shall report and make recommendations to the Legislature, the department, the Office of Probation Administration, the courts, local boards, and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data. The report and recommendations submitted to the Legislature shall be submitted electronically. In addition, the Foster Care Review Office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The executive director of the office shall also provide, at a time specified by the Health and Human Services Committee of the Legislature, regular electronic updates regarding child welfare data and information at least quarterly, and a fourth-quarter report which shall be the annual report. The executive director shall include issues, policy concerns, and problems which have come to the office and the executive director from analysis of the data. The executive director shall recommend alternatives to the identified problems and related needs of the office and the foster care system to the committee. The Health and Human Services Committee shall coordinate and prioritize data and information requests submitted to the office by members of the Legislature. The annual report of the office shall be completed by December 1 each year and shall be submitted electronically to the committee.

(5) The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the

individual physical, psychological, and sociological needs of each foster child are being met.

(6) At the request of any state agency, the executive director of the office or his or her designees from the office may conduct a case file review process and data analysis regarding any state ward or ward of the court whether placed in-home or out-of-home at the time of the case file review.

Source: Laws 1982, LB 714, § 3; Laws 1990, LB 1222, § 6; Laws 1996, LB 1044, § 195; Laws 1998, LB 1041, § 36; Laws 1999, LB 240, § 1; Laws 2012, LB998, § 5; Laws 2013, LB222, § 10; Laws 2015, LB265, § 9. Laws 2015, LB294, § 16.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB265, section 9, with LB294, section 16, to reflect all amendments.

Note: Changes made by LB294 became operative May 20, 2015. Changes made by LB265 became operative August 30, 2015.

43-1304 Local foster care review boards; members; powers and duties.

There shall be local foster care review boards to conduct the foster care file audit case reviews of children in foster care placement and carry out other powers and duties given to such boards under the Foster Care Review Act. The executive director of the office shall select members to serve on local boards from a list of applications submitted to the office. Each local board shall consist of not less than four and not more than ten members as determined by the executive director. The members of the local board shall reasonably represent the various social, economic, racial, and ethnic groups of the county or counties from which its members may be appointed. A person employed by the office, the Department of Health and Human Services, a residential child-caring agency, a child-placing agency, or a court shall not be appointed to a local board. A list of the members of each local board shall be sent to the department and the Office of Probation Administration.

Source: Laws 1982, LB 714, § 4; Laws 1987, LB 239, § 3; Laws 1996, LB 1044, § 196; Laws 1999, LB 240, § 2; Laws 2012, LB998, § 6; Laws 2013, LB265, § 34; Laws 2015, LB265, § 10.
Operative date August 30, 2015.

43-1308 Local board; powers and duties.

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, the designated local board shall:

(a) Conduct a foster care file audit case review at least once every six months for the case of each child in a foster care placement to determine what efforts have been made to carry out the plan or permanency plan for rehabilitation of the foster child and family unit or for permanent placement of such child pursuant to section 43-1312;

(b) Submit to the court having jurisdiction over such child for the purposes of foster care placement, within thirty days after the foster care file audit case review, its findings and recommendations regarding the efforts and progress made to carry out the plan or permanency plan established pursuant to section 43-1312 together with any other recommendations it chooses to make regarding the child. The findings and recommendations shall include whether there is a need for continued out-of-home placement, whether the current placement is safe and appropriate, the specific reasons for the findings and recommendations, including factors, opinions, and rationale considered in the foster care

file audit case review, whether the grounds for termination of parental rights under section 43-292 appear to exist, and the date of the next foster care file audit case review by the designated local board;

(c) If the return of the child to his or her parents is not likely, recommend referral for adoption and termination of parental rights, guardianship, placement with a relative, or, as a last resort, another planned, permanent living arrangement; and

(d) Promote and encourage stability and continuity in foster care by discouraging unnecessary changes in the placement of foster children and by encouraging the recruitment of foster parents who may be eligible as adoptive parents.

(2) When the office or designated local board determines that the interests of a child in a foster care placement would be served thereby, the office or designated local board may request a court review hearing as provided for in section 43-1313.

(3) Due to the confidential and protected nature of child-specific and family-specific information regarding mental and behavioral health services, if such information is discussed at a local board meeting or a portion of a meeting, the portion of the meeting at which such information is discussed shall be exempt from the Open Meetings Act.

Source: Laws 1982, LB 714, § 8; Laws 1985, LB 255, § 41; Laws 1990, LB 1222, § 7; Laws 1998, LB 1041, § 38; Laws 2012, LB998, § 9; Laws 2015, LB265, § 11.
Operative date August 30, 2015.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

Open Meetings Act, see section 84-1407.

43-1309 Records; release; when.

Upon the request of the office or designated local board, any records pertaining to a case assigned to such local board shall be furnished to the office or designated local board by the Department of Health and Human Services, by any public official or employee of a political subdivision having relevant contact with the child, or, upon court order, by the Office of Probation Administration. Upon the request of the Foster Care Review Office or designated local board, and if such information is not obtainable elsewhere, the court having jurisdiction of the foster child shall release such information to the office or designated local board as the court deems necessary to determine the physical, psychological, and sociological circumstances of such foster child.

Source: Laws 1982, LB 714, § 9; Laws 1990, LB 1222, § 8; Laws 1996, LB 1044, § 197; Laws 2012, LB998, § 10; Laws 2015, LB265, § 12.
Operative date August 30, 2015.

43-1311.01 Child removed from home; notice to noncustodial parent and certain relatives; when; information provided; department; duties.

(1) When notified pursuant to section 43-1311 or upon voluntary placement of a child, the Department of Health and Human Services shall, as provided in this section, identify, locate, and provide written notification of the removal of the child from his or her home, within thirty days after removal, to any

noncustodial parent and to all grandparents, all parents who have legal custody of a sibling of the child, and all adult siblings, adult aunts, adult uncles, adult cousins, and adult relatives suggested by the child or the child's parents, except when that relative's history of family or domestic violence makes notification inappropriate. For purposes of this section, sibling means an individual who is considered by Nebraska law to be a sibling or who would have been considered a sibling under Nebraska law but for a termination of parental rights or other disruption in parental rights such as the death of a parent. If the child is an Indian child as defined in section 43-1503, the child's extended family members as defined in such section shall be notified. Such notification shall include all of the following information:

(a) The child has been or is being removed from the custody of the parent or parents of the child;

(b) An explanation of the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;

(c) A description of the requirements for the relative to serve as a foster care provider or other type of care provider for the child and the additional services, training, and other support available for children receiving such care; and

(d) Information concerning the option to apply for guardianship assistance payments.

(2) The department shall investigate the names and locations of the relatives, including, but not limited to, asking the child in an age-appropriate manner about relatives important to the child and obtaining information regarding the location of the relatives.

(3) The department shall provide to the court, within thirty calendar days after removal of the child, the names and relationship to the child of all relatives contacted, the method of contact, and the responses received from the relatives.

Source: Laws 2011, LB177, § 6; Laws 2015, LB296, § 1.
Operative date July 1, 2015.

43-1311.02 Placement of child and siblings; sibling visitation or ongoing interaction; motions authorized; court review; department; duties.

(1)(a) Reasonable efforts shall be made to place a child and the child's siblings in the same foster care placement or adoptive placement, unless such placement is contrary to the safety or well-being of any of the siblings. This requirement applies even if the custody orders of the siblings are made at separate times.

(b) If the siblings are not placed together in a joint-sibling placement, the Department of Health and Human Services shall provide the siblings and the court with the reasons why a joint-sibling placement would be contrary to the safety or well-being of any of the siblings.

(2) When siblings are not placed together in a joint-sibling placement, the department shall make a reasonable effort to provide for frequent sibling visitation or ongoing interaction between the child and the child's siblings unless the department provides the siblings and the court with reasons why such sibling visitation or ongoing interaction would be contrary to the safety or well-being of any of the siblings. The court shall determine the type and

frequency of sibling visitation or ongoing interaction to be implemented by the department.

(3) Parties to the case may file a motion for joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(4) The court shall periodically review and evaluate the effectiveness and appropriateness of the joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(5) If an order is entered for termination of parental rights of siblings who are subject to this section, unless the court has suspended or terminated joint-sibling placement, sibling visitation, or ongoing interaction between siblings, the department shall make reasonable efforts to make a joint-sibling placement or do all of the following to facilitate frequent sibling visitation or ongoing interaction between the child and the child's siblings when the child is adopted or enters a permanent placement: (a) Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships; (b) provide prospective adoptive parents with information regarding the child's siblings; and (c) encourage prospective adoptive parents to plan for facilitating post-adoption contact between the child and the child's siblings.

(6) Any information regarding court-ordered or authorized joint-sibling placement, sibling visitation, or ongoing interaction between siblings shall be provided by the department to the parent or parents if parental rights have not been terminated unless the court determines that doing so would be contrary to the safety or well-being of the child and to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible following the entry of the court order or authorization as necessary to facilitate the sibling time.

(7) For purposes relative to the administration of the federal foster care program and the state plans pursuant to Title IV-B and Title IV-E of the federal Social Security Act, as such act existed on January 1, 2015, the term sibling means an individual considered to be a sibling under Nebraska law or an individual who would have been considered a sibling but for a termination of parental rights or other disruption of parental rights such as death of a parent.

Source: Laws 2011, LB177, § 7; Laws 2015, LB296, § 2.
Operative date July 1, 2015.

43-1312.01 Placement of child; order granting guardianship; court retain jurisdiction over child; termination of guardianship; when; effect of guardianship.

(1) If the permanency plan for a child established pursuant to section 43-1312 does not recommend return of the child to his or her parent or that the child be placed for adoption, the juvenile court may place the child in a guardianship in a relative home as defined in section 71-1901, in a kinship home as defined in section 71-1901, or with an individual as provided in section 43-285 if:

(a) The child is a juvenile who has been adjudged to be under subdivision (3)(a) of section 43-247;

(b) The child has been in the placement for at least six months;

(c) The child consents to the guardianship, if the child is ten years of age or older; and

(d) The guardian:

(i) Is suitable and able to provide a safe and permanent home for the child;

(ii) Has made a commitment to provide for the financial, medical, physical, and emotional needs of the child until the child reaches the age of majority or until the termination of extended guardianship assistance payments and medical care pursuant to section 43-4511;

(iii) Has made a commitment to prepare the child for adulthood and independence; and

(iv) Agrees to give notice of any changes in his or her residential address or the residence of the child by filing a written document in the juvenile court file of the child.

(2) In the order granting guardianship, the juvenile court:

(a) Shall grant to the guardian such powers, rights, and duties with respect to the care, maintenance, and treatment of the child as the biological or adoptive parent of the child would have;

(b) May specify the frequency and nature of family time or contact between the child and his or her parents, if appropriate;

(c) May specify the frequency and nature of family time or contact between the child and his or her siblings, if appropriate; and

(d) Shall require that the guardian not return the child to the physical care and custody of the person from whom the child was removed without prior approval of the court.

(3) The juvenile court shall retain jurisdiction over the child for modification or termination of the guardianship order. The court shall discontinue permanency reviews and case reviews and shall relieve the Department of Health and Human Services of the responsibility of supervising the placement of the child. Notwithstanding the retention of juvenile court jurisdiction, the guardianship placement shall be considered permanent for the child.

(4) The child shall remain in the custody of the guardian unless the order creating the guardianship is modified by the court.

(5) Guardianships established under this section shall terminate on the child's nineteenth birthday unless the child is eligible for continued guardianship assistance payments under section 43-4511 and an agreement is signed by the Department of Health and Human Services, the guardian, and the young adult, as defined in section 43-4503, to continue the guardianship assistance. The guardian shall ensure that any guardianship assistance funds provided by the department and received by the guardian for the purpose of an extended guardianship shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

(6) Upon the child's nineteenth birthday regardless of the existence of an agreement to extend the guardianship until the child's twenty-first birthday, the guardian shall no longer have the legal authority to make decisions on behalf of the child and shall have no more authority over the person or property of the child than a biological or adoptive parent would have over his or her child, absent consent from the child.

(7) A guardianship established under this section does not terminate the parent-child relationship, including:

- (a) The right of the child to inherit from his or her parents;
- (b) The right of the biological parents to consent to the child's adoption; and
- (c) The responsibility of the parents to provide financial, medical, or other support as ordered by the court.

(8) The Department of Health and Human Services shall adopt and promulgate rules and regulations for the administration of this section.

Source: Laws 2014, LB908, § 8; Laws 2015, LB243, § 13.
Operative date May 28, 2015.

43-1313 Review of dispositional order; when; procedure.

When a child is in foster care placement, the court having jurisdiction over such child for the purposes of foster care placement shall review the dispositional order for such child at least once every six months. The court may reaffirm the order or direct other disposition of the child. Any review hearing by a court having jurisdiction over such child for purposes of foster care placement shall be conducted on the record as provided in sections 43-283 and 43-284, and any recommendations of the office or designated local board concerning such child shall be admissible in such proceedings if such recommendations have been provided to all other parties of record. The court shall review a case on the record more often than every six months and at any time following the original placement of the child if the office or local board requests a hearing in writing specifying the reasons for the review. Members of the office or local board or its designated representative may attend and be heard at any hearing conducted under this section and may participate through counsel at the hearing with the right to call and cross-examine witnesses and present arguments to the court.

Source: Laws 1982, LB 714, § 13; Laws 1990, LB 1222, § 10; Laws 2012, LB998, § 12; Laws 2015, LB265, § 13.
Operative date August 30, 2015.

43-1318 Act, how cited.

Sections 43-1301 to 43-1322 shall be known and may be cited as the Foster Care Review Act.

Source: Laws 1982, LB 714, § 18; Laws 1996, LB 642, § 2; Laws 1998, LB 1041, § 44; Laws 2007, LB457, § 2; Laws 2011, LB177, § 9; Laws 2014, LB908, § 7; Laws 2015, LB265, § 15.
Operative date May 28, 2015.

(b) TRANSITION OF EMPLOYEES

43-1322 Out-of-Home Data Pilot Project; created; purpose; termination; Out-of-Home Data Pilot Project Advisory Group; created; members; duties; report.

(1) An Out-of-Home Data Pilot Project is created. The purpose of the project is to demonstrate, under the supervision of the Out-of-Home Data Pilot Project Advisory Group, how an existing state agency data system or systems currently used to account for children and juveniles in out-of-home placement could serve as a foundation for an independent, external oversight data warehouse.

The pilot project shall be administered by the Foster Care Review Office and shall terminate on January 1, 2017.

(2) The Out-of-Home Data Pilot Project Advisory Group is created. The group shall include the Inspector General of Nebraska Child Welfare or his or her designee, the State Court Administrator or his or her designee, the probation administrator of the Office of Probation Administration or his or her designee, the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee, the Commissioner of Education or his or her designee, the executive director of the Foster Care Review Office or his or her designee, a representative of the University of Nebraska at Omaha, Juvenile Justice Institute, the Chief Information Officer of the office of Chief Information Officer or his or her designee, and one representative each from the Division of Children and Family Services of the Department of Health and Human Services, the Division of Developmental Disabilities of the Department of Health and Human Services, the Division of Behavioral Health of the Department of Health and Human Services, and the Division of Medicaid and Long-Term Care of the Department of Health and Human Services.

(3) The purposes of the Out-of-Home Data Pilot Project Advisory Group are to oversee the Out-of-Home Data Pilot Project and to consider whether an independent, external oversight data warehouse could be created by building on an existing state agency data system or systems currently used to account for children and juveniles in out-of-home placement. The group shall consider the features and capabilities of existing state agency data systems that include: Information on children and juveniles in out-of-home placement; where an independent, external oversight data warehouse might be located within state government for administrative purposes; possible costs associated with establishing and operating an independent, external oversight data warehouse; challenges of data collection; barriers to data sharing; protection of confidential information; restrictions on access to confidential information; and other issues pertinent to the group's purpose. The group shall submit a report electronically to the Legislature, the Governor, and the Supreme Court by December 15, 2015.

(4) For purposes of this section, an independent, external oversight data warehouse means a data system which allows data analysis to: (a) Account for children and juveniles in out-of-home placement regardless of whether they entered out-of-home placement through the Department of Health and Human Services or through court involvement; (b) determine whether out-of-home placement outcomes for children and juveniles meet policy goals for children and juveniles in out-of-home placement; (c) determine whether children are better off as a result of out-of-home placement; (d) identify indicators for successful outcomes of out-of-home placement; and (e) project future needs for children and juveniles in out-of-home placement.

Source: Laws 2015, LB265, § 14.
Operative date May 28, 2015.

ARTICLE 14

PARENTAL SUPPORT AND PATERNITY

Section

43-1406. Determination of paternity by other state or Indian tribe; full faith and credit; legitimacy of child.

43-1406 Determination of paternity by other state or Indian tribe; full faith and credit; legitimacy of child.

(1) A determination of paternity made by any other state or by an Indian tribe as defined in section 43-1503, whether established through voluntary acknowledgment, genetic testing, tribal law, or administrative or judicial processes, shall be given full faith and credit by this state.

(2) A child whose parents marry is legitimate.

Source: Laws 1941, c. 81, § 6, p. 323; C.S.Supp.,1941, § 43-706; R.S. 1943, § 13-106; R.S.1943, (1983), § 13-106; Laws 1985, Second Spec. Sess., LB 7, § 74; Laws 1986, LB 79, § 1; Laws 1991, LB 457, § 15; Laws 1993, LB 500, § 53; Laws 1994, LB 1224, § 57; Laws 2015, LB566, § 3.
Effective date August 30, 2015.

ARTICLE 15**NEBRASKA INDIAN CHILD WELFARE ACT**

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| Section | |
| 43-1501. | Act, how cited. |
| 43-1502. | Purpose of act. |
| 43-1503. | Terms, defined. |
| 43-1504. | Custody proceeding; jurisdiction of tribe; transfer of proceedings; rights of tribe; tribal proceedings; effect. |
| 43-1505. | Foster care placement; termination of parental rights; procedures; rights. |
| 43-1505.01. | Notice of involuntary proceeding in state court; contents; filing with court. |
| 43-1506. | Voluntary proceeding; consent; when valid; initiation of voluntary services; notice; department or state; duties; withdrawal of consent. |
| 43-1507. | Petition to invalidate actions in violation of law. |
| 43-1508. | Placement guidelines; preferences; records. |
| 43-1509. | Return of custody; removal from foster care; procedures. |
| 43-1514. | Emergency removal or placement of child; appropriate action; hotline representative; duty. |
| 43-1517. | Rules and regulations. |

43-1501 Act, how cited.

Sections 43-1501 to 43-1517 shall be known and may be cited as the Nebraska Indian Child Welfare Act.

Source: Laws 1985, LB 255, § 1; Laws 2015, LB566, § 4.
Effective date August 30, 2015.

43-1502 Purpose of act.

The purpose of the Nebraska Indian Child Welfare Act is to clarify state policies and procedures regarding the implementation by the State of Nebraska of the federal Indian Child Welfare Act. It shall be the policy of the state to cooperate fully with Indian tribes in Nebraska in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced. This cooperation includes recognition by the state that Indian tribes have a continuing and compelling governmental interest in an Indian child whether or not the Indian child is in the physical or legal custody of a parent, an Indian custodian, or an Indian extended family member at the commencement of an Indian child custody proceeding or the Indian child has resided or is domiciled on an Indian reservation. The state is committed to protecting the essential tribal relations

and best interests of an Indian child by promoting practices consistent with the federal Indian Child Welfare Act and other applicable law designed to prevent the Indian child's voluntary or involuntary out-of-home placement.

Source: Laws 1985, LB 255, § 2; Laws 2015, LB566, § 5.
Effective date August 30, 2015.

43-1503 Terms, defined.

For purposes of the Nebraska Indian Child Welfare Act, except as may be specifically provided otherwise:

(1) Active efforts shall mean and include, but not be limited to:

(a) A concerted level of casework, both prior to and after the removal of an Indian child, exceeding the level that is required under reasonable efforts to preserve and reunify the family described in section 43-283.01 in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe or tribes to the extent possible under the circumstances;

(b) A request to the Indian child's tribe or tribes and extended family known to the department or the state to convene traditional and customary support and services;

(c) Actively engaging, assisting, and monitoring the family's access to and progress in culturally appropriate and available resources of the Indian child's extended family members, tribal service area, Indian tribe or tribes, and individual Indian caregivers;

(d) Identification of and provision of information to the Indian child's extended family members known to the department or the state concerning appropriate community, state, and federal resources that may be able to offer housing, financial, and transportation assistance and actively assisting the family in accessing such community, state, and federal resources;

(e) Identification of and attempts to engage tribally designated Nebraska Indian Child Welfare Act representatives;

(f) Consultation with extended family members known to the department or the state, or a tribally designated Nebraska Indian Child Welfare Act representative if an extended family member cannot be located, to identify family or tribal support services that could be provided by extended family members or other tribal members if extended family members cannot be located;

(g) Exhaustion of all available tribally appropriate family preservation alternatives; and

(h) When the department or the state is involved in a proceeding under the act, the department or the state shall provide a written report of its attempt to provide active efforts to the court at every hearing involving an Indian child. This report shall be sent to the Indian child's tribe or tribes within three days after being filed with the court and shall be deemed to be admissible evidence of active efforts in proceedings conducted under the act;

(2) Best interests of the Indian child shall include:

(a) Using practices in compliance with the federal Indian Child Welfare Act, the Nebraska Indian Child Welfare Act, and other applicable laws that are designed to prevent the Indian child's voluntary or involuntary out-of-home placement; and

(b) Whenever an out-of-home placement is necessary, placing the child, to the greatest extent possible, in a foster home, adoptive placement, or other type of custodial placement that reflects the unique values of the Indian child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe or tribes and tribal community;

(3) Child custody proceeding shall mean and include:

(a) Foster care placement which shall mean any action removing an Indian child from his or her parent or Indian custodian for temporary or emergency placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) Termination of parental rights which shall mean any action resulting in the termination of the parent-child relationship;

(c) Preadoptive placement which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement;

(d) Adoptive placement which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption; and

(e) Voluntary foster care placement which shall mean a non-court-involved proceeding in which the department or the state is facilitating a voluntary foster care placement or in-home services to families at risk of entering the foster care system. An Indian child, parent, or tribe involved in a voluntary foster care placement shall only be provided protections as provided in subsection (4) of section 43-1505 and sections 43-1506 and 43-1508.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents;

(4) The department or the state shall mean the applicable state social services entity that is involved with the provision of services to Indian children, specifically the Department of Health and Human Services and the Office of Probation Administration in certain cases;

(5) Extended family member shall be as defined by the law or custom of the Indian child's primary tribe or, in the absence of such laws or customs of the primary tribe, the law or custom of the Indian child's other tribes or, in the absence of such law or custom, shall mean a person who has reached the age of eighteen and who is the Indian child's parent, grandparent, aunt or uncle, clan member, band member, sibling, brother-in-law or sister-in-law, niece or nephew, cousin, or stepparent;

(6) Federal Indian Child Welfare Act shall mean the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq.;

(7) Indian shall mean any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606;

(8) Indian child shall mean any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(9) Indian child's primary tribe shall mean, in the case of an Indian child that is a member or eligible for membership in multiple tribes, the tribe determined by the procedure enumerated in subsection (4) of section 43-1504;

(10) Indian child's tribe or tribes shall mean the Indian tribe or tribes in which an Indian child is a member or eligible for membership;

(11) Indian custodian shall mean any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(12) Indian organization shall mean any group, association, partnership, limited liability company, corporation, or other legal entity owned or controlled by Indians or a majority of whose members are Indians;

(13) Indian tribe shall mean any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. 1602(c);

(14) Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father when paternity has not been acknowledged or established;

(15) Qualified expert witness shall mean one of the following persons, in descending priority order although a court may assess the credibility of individual witnesses:

(a) A member of the Indian child's tribe or tribes who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family and childrearing practices;

(b) A member of another tribe who is recognized to be a qualified expert witness by the Indian child's tribe or tribes based on his or her knowledge of the delivery of child and family services to Indians and the Indian child's tribe or tribes;

(c) A lay expert witness that possesses substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe or tribes;

(d) A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe or tribes; or

(e) Any other professional person having substantial education in the area of his or her specialty;

(16) Reservation shall mean Indian country as defined in 18 U.S.C. 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation or a federally designated or established service area which means a geographic area designated by the United States where federal services and benefits furnished to Indians and Indian tribes are provided or which is otherwise designated to constitute an area on or near a reservation;

(17) Secretary shall mean the Secretary of the United States Department of the Interior;

(18) Tribal court shall mean a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings; and

(19) Tribal service area shall mean a geographic area, as defined by the applicable Indian tribe or tribes, in which tribal services and programs are provided to Indians.

Source: Laws 1985, LB 255, § 3; Laws 1993, LB 121, § 216; Laws 1999, LB 475, § 3; Laws 2013, LB265, § 35; Laws 2015, LB566, § 6.
Effective date August 30, 2015.

43-1504 Custody proceeding; jurisdiction of tribe; transfer of proceedings; rights of tribe; tribal proceedings; effect.

(1) An Indian tribe shall have jurisdiction exclusive as to this state over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except when such jurisdiction is otherwise vested in the state by existing federal law. When an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(2) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the primary tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe, except that such transfer shall be subject to declination by the tribal court of the primary tribe.

(3) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe or tribes shall have a right to intervene at any point in the proceeding regardless of whether the intervening party is represented by legal counsel. The Indian child's tribe or tribes and their counsel are not required to associate with local counsel or pay a fee to appear pro hac vice in a child custody proceeding under the Nebraska Indian Child Welfare Act. Representatives from the Indian child's tribe or tribes have the right to fully participate in every court proceeding held under the act.

(4) If the Indian child is eligible for membership or enrolled in multiple Indian tribes and more than one Indian tribe intervenes in a state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian child's primary tribe shall be determined in the following manner:

(a) The applicable Indian tribes shall enter into a unanimous agreement designating which Indian tribe is the Indian child's primary tribe for the underlying state court proceeding within thirty days after intervention by one or more additional Indian tribes, after consultation, if practicable, with the parents of the Indian child and with the Indian child if he or she is twelve years of age or older; or

(b) If unanimous agreement is not possible within the thirty-day period, the state court in which the proceeding is pending shall determine the Indian child's primary tribe based upon the amount and significance of the contacts between each Indian tribe and the Indian child.

(5) The State of Nebraska shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Source: Laws 1985, LB 255, § 4; Laws 2015, LB566, § 7.
Effective date August 30, 2015.

43-1505 Foster care placement; termination of parental rights; procedures; rights.

(1) In any involuntary proceeding in a state court, when the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall send a notice conforming to the requirements of 25 C.F.R. 23.11 to the parents, the Indian custodian, and the Indian child's tribe or tribes, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe or tribes cannot be determined, such notice shall be given to the secretary in like manner, who may provide the requisite notice to the parent or Indian custodian and the tribe or tribes. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or tribes or the secretary. The parent or Indian custodian or the tribe or tribes shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(2) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interests of the Indian child. When state law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the secretary upon appointment of counsel and request from the secretary, upon certification of the presiding judge, payment of reasonable attorney's fees out of funds which may be appropriated.

(3) Each party to a foster care placement or termination of parental rights proceeding under state law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(4) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family or unite the parent or Indian custodian with the Indian child and that these efforts have proved unsuccessful. Any written evidence showing that active efforts have been made shall be admissible in a proceeding under the Nebraska Indian Child Welfare Act. Prior to the court ordering placement of the child in foster care or the termination of parental rights, the court shall make a determination

that active efforts have been provided or that the party seeking placement or termination has demonstrated that attempts were made to provide active efforts to the extent possible under the circumstances.

(5) The court shall not order foster care placement under this section in the absence of a determination by the court, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(6) The court shall not order termination of parental rights under this section in the absence of a determination by the court, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Source: Laws 1985, LB 255, § 5; Laws 1987, LB 93, § 11; Laws 2015, LB566, § 8.
Effective date August 30, 2015.

43-1505.01 Notice of involuntary proceeding in state court; contents; filing with court.

(1) Notice of an involuntary proceeding in state court involving an Indian child shall conform with the requirements of 25 C.F.R. 23.11 and shall contain the following additional information, to the extent it is known, and if this additional information is unknown, a statement indicating what attempts have been made to locate the information:

- (a) The name and last-known address of the Indian child;
- (b) The name and address of the Indian child's parents, paternal and maternal grandparents, and Indian custodians, if any;
- (c) The tribal affiliation of the parents of the Indian child or, if applicable, the Indian custodians;
- (d) A statement as to whether the Indian child's residence or domicile is on the tribe's reservation;
- (e) An identification of any tribal court order affecting the custody of the Indian child to which a state court may be required to accord full faith and credit; and
- (f) A copy of the motion for foster care placement of the Indian child and any accompanying affidavits in support thereof if such documents exist.

(2) A copy of the notice of an involuntary proceeding in state court involving an Indian child, as described in subsection (1) of this section, shall be filed with the court within three days after issuance.

Source: Laws 2015, LB566, § 9.
Effective date August 30, 2015.

43-1506 Voluntary proceeding; consent; when valid; initiation of voluntary services; notice; department or state; duties; withdrawal of consent.

(1) When any parent or Indian custodian voluntarily consents (a) to a foster care placement or (b) to relinquishment or termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding

judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(2) When the department or the state offers the parent, Indian child, or Indian custodian services through a voluntary foster care placement or in-home services and the department or the state knows or has reason to know that an Indian child is involved, the department or the state shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by telephone call, facsimile transmission, email, or registered mail with return receipt requested, of the provision of services and any pending child custody proceeding. If the identity or location of the parent or Indian custodian and the tribe or tribes cannot be determined, such notice shall be given to the secretary and the appropriate area director listed in 25 C.F.R. 23.11 in like manner who may provide the requisite notice to the parent or Indian custodian and the tribe or tribes. Notice shall be provided within five days after the initiation of voluntary services.

(3) When the department or the state offers the parent or Indian custodian services through a voluntary foster care placement or in-home services, the Indian custodian of the child and the Indian child's tribe or tribes have a right to participate in, provide, or consult with the department or the state regarding the provision of voluntary services.

(4) When the department or the state offers the parent or Indian custodian services through a voluntary foster care placement or in-home services, the department or the state shall provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family or unite the parent or Indian custodian with the Indian child until these efforts have proved unsuccessful.

(5) Prior to any voluntary relinquishment or termination of parental rights proceeding in which the department or the state is a party or was providing assistance to a parent or Indian custodian, the department or the state or its designee shall submit the following information, in writing, to the court if it has not previously been provided:

- (a) The jurisdictional authority of the court in the proceeding;
- (b) The date of the Indian child's birth and the date of any voluntary consent to relinquishment or termination;
- (c) The age of the Indian child at the time voluntary consent was given;
- (d) The date the parent appeared in court and was informed by the judge of the terms and consequences of any voluntary consent to relinquishment or termination;
- (e) The parent fully understood the explanation of such terms and consequences in English or, when necessary, the explanation was interpreted into a language that the parent understood and the parent fully understood the explanation of such terms and consequences in the language into which such terms and consequences were translated;
- (f) The name and address of any prospective adoptive parent whose identity is known to the consenting parent;

(g) The promises, if any, made to the parent, as a condition of the parent's consent, including promises regarding the tribal affiliation or health, ethnic, religious, economic, or other personal characteristics of any adoptive family with which the child would be placed; and

(h) The details, if any, of an enforceable communication or contact agreement authorized by section 43-162.

(6) Any parent or Indian custodian may withdraw consent to a foster care or voluntary foster care placement under state law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(7) In any voluntary proceedings for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(8) After the entry of a final decree of adoption of an Indian child in any state court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under state law.

Source: Laws 1985, LB 255, § 6; Laws 2015, LB566, § 10.
Effective date August 30, 2015.

43-1507 Petition to invalidate actions in violation of law.

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's primary tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 43-1504 to 43-1506.

Source: Laws 1985, LB 255, § 7; Laws 2015, LB566, § 11.
Effective date August 30, 2015.

43-1508 Placement guidelines; preferences; records.

(1) In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with the following in descending priority order:

(a) A member of the Indian child's extended family;

(b) Other members of the Indian child's tribe or tribes;

(c) Other Indian families; or

(d) A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes;

(2) Any child accepted for foster care or preadoptive placement or a voluntary foster care placement shall be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may

be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with one of the following in descending priority order:

- (a) A member of the Indian child's extended family;
- (b) Other members of the Indian child's tribe or tribes;
- (c) A foster home licensed, approved, or specified by the Indian child's tribe or tribes;
- (d) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- (e) A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes;
- (f) An Indian facility or program for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or
- (g) A non-Indian facility or program for children approved by an Indian tribe.

(3) In the case of a placement under subsection (1) or (2) of this section, if the Indian child's primary tribe shall establish a different order of preference by resolution or in the absence thereof the order established by resolution of the Indian child's other tribes, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (2) of this section. When appropriate, the preference of the Indian child or parent shall be considered, except that, when a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(4) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. Good cause to deviate from the placement preferences in subsections (1) through (3) of this section includes: (a) The request of the biological parents or the Indian child when the Indian child is at least twelve years of age; (b) the extraordinary physical or emotional needs of the Indian child as established by testimony of a qualified expert witness; or (c) the unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria. The burden of establishing the existence of good cause to deviate from the placement preferences and order shall be by clear and convincing evidence on the party urging that the preferences not be followed.

(5) A record of each such placement, under state law, of an Indian child shall be maintained by the state, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the secretary or the Indian child's tribe or tribes.

Source: Laws 1985, LB 255, § 8; Laws 2015, LB566, § 12.
Effective date August 30, 2015.

43-1509 Return of custody; removal from foster care; procedures.

(1) Notwithstanding any other state law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 43-1505, that such return of custody is not in the best interests of the Indian child.

(2) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the Nebraska Indian Child Welfare Act, except in the case in which an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

Source: Laws 1985, LB 255, § 9; Laws 2015, LB566, § 13.
Effective date August 30, 2015.

43-1514 Emergency removal or placement of child; appropriate action; hotline representative; duty.

(1) Nothing in the Nebraska Indian Child Welfare Act shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. The state authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the Nebraska Indian Child Welfare Act, transfer the child to the jurisdiction of the appropriate Indian tribe or tribes, or restore the child to the parent or Indian custodian, as may be appropriate.

(2) During the course of each intake received by the statewide child abuse and neglect hotline provided by the Department of Health and Human Services, the hotline representative shall inquire as to whether the person calling the hotline believes one of the parties involved may be an Indian child or Indian person. If the hotline representative has any reason to believe that an Indian child or Indian person is involved in the intake, the representative shall immediately document the information and inform his or her supervisor.

Source: Laws 1985, LB 255, § 14; Laws 2015, LB566, § 14.
Effective date August 30, 2015.

43-1517 Rules and regulations.

The department or the state, in consultation with Indian tribes, shall adopt and promulgate rules and regulations to establish standards and procedures for the department's or the state's review of cases subject to the Nebraska Indian Child Welfare Act and methods for monitoring the department's or the state's compliance with the federal Indian Child Welfare Act and the Nebraska Indian Child Welfare Act. The standards and procedures and the monitoring methods shall be integrated into the department's or the state's structure and plan for

the federal government's child and family service review process and any program improvement plan resulting from that process.

Source: Laws 2015, LB566, § 15.
Effective date August 30, 2015.

ARTICLE 22 FAMILY FINDING SERVICES

Section

- 43-2201. Legislative intent.
- 43-2202. Terms, defined.
- 43-2203. Pilot project participants; duties.
- 43-2204. Pilot project; created; department; duties; termination of project.
- 43-2205. Department; duties; collaboration.
- 43-2206. Legislative intent.
- 43-2207. Data collection system.
- 43-2208. Independent evaluation of pilot project.
- 43-2209. Rules and regulations.

43-2201 Legislative intent.

It is the intent of the Legislature to:

- (1) Promote kinship care and lifelong connections through the process of family finding when a child has been removed from the legal custody of the child's parents;
- (2) Prevent recurrence of abuse, neglect, exploitation, or other maltreatment of children;
- (3) Reduce the length of time children spend in foster care;
- (4) Reduce multiple placements of children in foster care;
- (5) Remain in compliance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351; and
- (6) Create a pilot project for the process of locating and engaging family members in the life of a child who is a ward of the state or is participating in the bridge to independence program as defined in section 43-4503, or both, and in need of permanency through a lifelong network of support.

Source: Laws 2015, LB243, § 1.
Operative date August 30, 2015.

43-2202 Terms, defined.

For purposes of sections 43-2201 to 43-2209:

- (1) Department means the Department of Health and Human Services;
- (2) Family finding means the process described in section 43-2203;
- (3) Family member means:
 - (a) A person related to a child by blood, adoption, or affinity within the fifth degree of kinship;
 - (b) A stepparent;
 - (c) A stepsibling;
 - (d) The spouse, widow, widower, or former spouse of any of the persons described in subdivisions (a) through (c) of this subdivision; and

(e) Any individual who is a primary caretaker or trusted adult in a kinship home and who, as a primary caretaker, has lived with the child or, as a trusted adult, has a preexisting, significant relationship with the child;

(4) Kinship home means a home in which a child receives foster care and at least one of the primary caretakers has previously lived with or is a trusted adult that has a preexisting, significant relationship with the child;

(5) Provider means an organization providing services as a child-placing agency; and

(6) Service area means a geographic area administered by the department and designated pursuant to section 81-3116.

Source: Laws 2015, LB243, § 2.
Operative date August 30, 2015.

43-2203 Pilot project participants; duties.

The department, its contracted providers of family finding services, and family members of children involved in cases which are part of the pilot project created in section 43-2204 shall participate in family finding. Family finding is the process of engagement, searching, preparation, planning, decisionmaking, lifetime network creation, healing, and permanency in order to:

(1) Search for and identify family members and engage them in planning and decisionmaking;

(2) Gain commitments from family members to support a child through nurturing relationships and to support the parent or parents, when appropriate; and

(3) Achieve a safe, permanent legal home or lifelong connection for the child, either through reunification or through permanent placement through legal guardianship or adoption.

Source: Laws 2015, LB243, § 3.
Operative date August 30, 2015.

43-2204 Pilot project; created; department; duties; termination of project.

A pilot project is created to provide family finding services within at least two service areas. The department shall contract with providers of family finding services or the case management lead agency pilot project authorized under section 68-1212 to carry out the family finding services pilot project. A provider may contract within multiple service areas. Each contracting provider shall be trained in and implement the steps described in section 43-2203. The family finding services pilot project shall terminate on June 30, 2019.

Source: Laws 2015, LB243, § 4.
Operative date August 30, 2015.

43-2205 Department; duties; collaboration.

(1) Under the pilot project created under section 43-2204, the department shall refer a portion of all cases involving children who are wards of the state in foster care or participating in the bridge to independence program as defined in section 43-4503, or both, to providers of family finding services who or which shall (a) locate family members of the children, (b) engage and empower

family members, and (c) create an individualized plan to achieve a safe, permanent legal home for the children when possible.

(2) The department shall provide administrative oversight of the contracts entered into pursuant to the pilot project created under section 43-2204.

(3) A child's departmental case manager, the child's foster parents, and the provider of family finding services shall collaborate together to maximize success throughout the family finding process.

(4) The department shall carry out the requirements of the Interstate Compact for the Placement of Children when achieving out-of-state placement of a ward of the court, including prompt submission of required paperwork to ensure that the family finding process moves forward in a timely manner.

Source: Laws 2015, LB243, § 5.

Operative date August 30, 2015.

Cross References

Interstate Compact for the Placement of Children, see section 43-1103.

43-2206 Legislative intent.

It is the intent of the Legislature to appropriate seven hundred fifty thousand dollars from the General Fund for each of fiscal years 2015-16 and 2016-17 and one million five hundred thousand dollars from the General Fund for each of fiscal years 2017-18 and 2018-19 to the department which shall pursue federal matching funds as applicable and allocate such funds to contracting providers of family finding services who or which shall use such funds to (1) provide family finding services pursuant to contracts with the department, (2) create and coordinate training initiatives for departmental case managers assigned to cases referred for family finding services to promote provider and family engagement and to train case managers on the principles of family finding services for successful outcomes, and (3) provide contract monitoring and oversight of the pilot project and pay evaluation costs.

Source: Laws 2015, LB243, § 6.

Operative date August 30, 2015.

43-2207 Data collection system.

The department shall establish a data collection system and collect data from participating providers annually. Such data shall be divided by service area and shall include (1) the number of participating children and youth, (2) the ages of the participating children and youth, (3) the duration of each case, and (4) case outcomes, including permanency, guardianship, and family support. Data involving incomplete cases shall be included and identified as such.

Source: Laws 2015, LB243, § 7.

Operative date August 30, 2015.

43-2208 Independent evaluation of pilot project.

The department shall contract with an academic institution to complete an independent evaluation of the pilot project created under section 43-2204. The evaluation shall assess the effectiveness of the pilot project in achieving the purposes described in section 43-2201 and the overall fiscal impact. The evaluation shall begin after completion of the second year of the pilot project and shall be completed in the third year of the pilot project. The department

shall electronically transmit the evaluation to the Health and Human Services Committee of the Legislature.

Source: Laws 2015, LB243, § 8.
Operative date August 30, 2015.

43-2209 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out sections 43-2201 to 43-2208.

Source: Laws 2015, LB243, § 9.
Operative date August 30, 2015.

ARTICLE 24 JUVENILE SERVICES

Section
43-2404.02. Community-based Juvenile Services Aid Program; created; use; reports.

43-2404.02 Community-based Juvenile Services Aid Program; created; use; reports.

(1) There is created a separate and distinct budgetary program within the commission to be known as the Community-based Juvenile Services Aid Program. Funding acquired from participation in the federal act, state General Funds, and funding acquired from other sources which may be used for purposes consistent with the Juvenile Services Act and the federal act shall be used to aid in the establishment and provision of community-based services for juveniles who come in contact with the juvenile justice system.

(2)(a) Ten percent of the annual General Fund appropriation to the Community-based Juvenile Services Aid Program, excluding administrative budget funds, shall be set aside for the development of a common data set and evaluation of the effectiveness of the Community-based Juvenile Services Aid Program. The intent in creating this common data set is to allow for evaluation of the use of the funds and the effectiveness of the programs or outcomes in the Community-based Juvenile Services Aid Program.

(b) The common data set shall be developed and maintained by the commission and shall serve as a primary data collection site for any intervention funded by the Community-based Juvenile Services Aid Program designed to serve juveniles and deter involvement in the formal juvenile justice system. The commission shall work with agencies and programs to enhance existing data sets. To ensure that the data set permits evaluation of recidivism and other measures, the commission shall work with the Office of Probation Administration, juvenile diversion programs, law enforcement, the courts, and others to compile data that demonstrates whether a youth has moved deeper into the juvenile justice system. The University of Nebraska at Omaha, Juvenile Justice Institute, shall assist with the development of common definitions, variables, and training required for data collection and reporting into the common data set by juvenile justice programs. The common data set maintained by the commission shall be provided to the University of Nebraska at Omaha, Juvenile Justice Institute, to assess the effectiveness of the Community-based Juvenile Services Aid Program.

(c) Providing the commission access to records and information for, as well as the commission granting access to records and information from, the common data set is not a violation of confidentiality provisions under any law, rule, or regulation if done in good faith for purposes of evaluation. Records and documents, regardless of physical form, that are obtained or produced or presented to the commission for the common data set are not public records for purposes of sections 84-712 to 84-712.09.

(d) The ten percent of the annual General Fund appropriation to the Community-based Juvenile Services Aid Program, excluding administrative budget funds, shall be appropriated as follows: In fiscal year 2015-16, seven percent shall go to the commission for development of the common data set and three percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation. In fiscal year 2016-17, six percent shall go to the commission for development and maintenance of the common data set and four percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation. Every fiscal year thereafter, beginning in fiscal year 2017-18, five percent shall go to the commission for development and maintenance of the common data set and five percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation.

(e) The remaining funds in the annual General Fund appropriation to the Community-based Juvenile Services Aid Program shall be apportioned as aid in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number of residents per county and federally recognized or state-recognized Indian tribe who are twelve years of age through eighteen years of age and other relevant factors as determined by the commission. The commission may require a local match of up to forty percent from the county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three which is receiving aid under such program. Any local expenditures for community-based programs for juveniles may be applied toward such match requirement.

(3)(a) In distributing funds provided under the Community-based Juvenile Services Aid Program, aid recipients shall prioritize programs and services that will divert juveniles from the juvenile justice system, reduce the population of juveniles in juvenile detention and secure confinement, and assist in transitioning juveniles from out-of-home placements.

(b) Funds received under the Community-based Juvenile Services Aid Program shall be used exclusively to assist the aid recipient in the implementation and operation of programs or the provision of services identified in the aid recipient's comprehensive juvenile services plan, including programs for local planning and service coordination; screening, assessment, and evaluation; diversion; alternatives to detention; family support services; treatment services; truancy prevention and intervention programs; pilot projects approved by the commission; payment of transportation costs to and from placements, evaluations, or services; personnel when the personnel are aligned with evidence-based treatment principles, programs, or practices; contracting with other state agencies or private organizations that provide evidence-based treatment or programs; preexisting programs that are aligned with evidence-based practices or best practices; and other services that will positively impact juveniles and families in the juvenile justice system.

(c) Funds received under the Community-based Juvenile Services Aid Program shall not be used for the following: Construction of secure detention facilities, secure youth treatment facilities, or secure youth confinement facilities; capital construction or the lease or acquisition of facilities; programs, services, treatments, evaluations, or other preadjudication services that are not based on or grounded in evidence-based practices, principles, and research, except that the commission may approve pilot projects that authorize the use of such aid; or office equipment, office supplies, or office space.

(d) Any aid not distributed to counties under this subsection shall be retained by the commission to be distributed on a competitive basis under the Community-based Juvenile Services Aid Program for a county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three demonstrating additional need in the funding areas identified in this subsection.

(e) If a county, multiple counties, or a federally recognized or state-recognized Indian tribe or tribes is denied aid under this section or receives no aid under this section, the entity may request an appeal pursuant to the appeal process in rules and regulations adopted and promulgated by the commission. The commission shall establish appeal and hearing procedures by December 15, 2014. The commission shall make appeal and hearing procedures available on its web site.

(4)(a) Any recipient of aid under the Community-based Juvenile Services Aid Program shall electronically file an annual report as required by rules and regulations adopted and promulgated by the commission. Any program funded through the Community-based Juvenile Services Aid Program that served juveniles shall report data on the individual youth served. Any program that is not directly serving youth shall include program-level data. In either case, data collected shall include, but not be limited to, the following: The type of juvenile service, how the service met the goals of the comprehensive juvenile services plan, demographic information on the juveniles served, program outcomes, the total number of juveniles served, and the number of juveniles who completed the program or intervention.

(b) Any recipient of aid under the Community-based Juvenile Services Aid Program shall be assisted by the University of Nebraska at Omaha, Juvenile Justice Institute, in reporting in the common data set, as set forth in the rules and regulations adopted and promulgated by the commission. Community-based aid utilization and evaluation data shall be stored and maintained by the commission.

(c) Evaluation of the use of funds and the evidence of the effectiveness of the programs shall be completed by the University of Nebraska at Omaha, Juvenile Justice Institute, specifically:

(i) The varying rates of recidivism, as defined by rules and regulations adopted and promulgated by the commission, and other measures for juveniles participating in community-based programs; and

(ii) Whether juveniles are sent to staff secure or secure juvenile detention after participating in a program funded by the Community-based Juvenile Services Aid Program.

(5) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds for aid appropriated under the Community-based Juvenile Services Aid Program. The report shall include, but not be

limited to, an aggregate report of the use of the Community-based Juvenile Services Aid Program funds, including the types of juvenile services and programs that were funded, demographic information on the total number of juveniles served, program success rates, the total number of juveniles sent to secure juvenile detention or residential treatment and secure confinement, and a listing of the expenditures of all counties and federally recognized or state-recognized Indian tribes for detention, residential treatment, and secure confinement. The report submitted to the Legislature shall be submitted electronically.

(6) The commission shall adopt and promulgate rules and regulations for the Community-based Juvenile Services Aid Program in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, the Nebraska Association of County Officials, and the University of Nebraska at Omaha, Juvenile Justice Institute. The rules and regulations shall include, but not be limited to:

(a) The required elements of a comprehensive juvenile services plan and planning process;

(b) The Community-based Juvenile Services Aid Program formula, review process, match requirements, and fund distribution. The distribution process shall ensure a conflict of interest policy;

(c) A distribution process for funds retained under subsection (3) of this section;

(d) A plan for evaluating the effectiveness of plans and programs receiving funding;

(e) A reporting process for aid recipients;

(f) A reporting process for the commission to the Governor and Legislature. The report shall be made electronically to the Governor and the Legislature; and

(g) Requirements regarding the use of the common data set.

Source: Laws 2001, LB 640, § 7; Laws 2005, LB 193, § 2; Laws 2008, LB1014, § 54; Laws 2010, LB800, § 33; Laws 2012, LB782, § 47; Laws 2013, LB561, § 48; Laws 2014, LB464, § 30; Laws 2015, LB265, § 16.

Operative date August 30, 2015.

ARTICLE 26 CHILD CARE

Section
43-2621. Block grant funds; use.

43-2621 Block grant funds; use.

(1) Funds provided to the State of Nebraska pursuant to the Child Care and Development Block Grant Act of 1990, 42 U.S.C. 9857 et seq., as such act and sections existed on January 1, 2015, shall be used to implement the Quality Child Care Act, except as provided in subsections (3) and (4) of this section.

(2) The Legislature finds that the reservations and allocations contained in subsections (3) and (4) of this section are made pursuant to the 2014 reauthori-

zation of such federal act. The Legislature also finds that such reservations and allocations are designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care and are in alignment with its comprehensive system of child care and early education programs.

(3)(a)(i) Beginning October 1, 2015, the Department of Health and Human Services shall increase its reservation of federal funds received from the child care and development block grant under such federal act from four percent to seven percent for activities relating to the quality of child care services.

(ii) Beginning October 1, 2017, the department shall increase its reservation of federal funds received from such block grant from seven percent to eight percent for activities relating to the quality of child care services.

(iii) Beginning October 1, 2019, the department shall increase its reservation of federal funds received from such block grant from eight percent to nine percent for activities relating to the quality of child care services.

(b) In addition to the percentages reserved in subdivision (3)(a) of this section for activities relating to the quality of child care services, beginning October 1, 2016, the department shall reserve three percent of the federal funds received from such block grant for activities relating to the quality of care for infants and toddlers.

(4)(a)(i) Beginning October 1, 2015, the increase from four percent to seven percent in reservation of federal funds for activities relating to the quality of child care services described in subdivision (3)(a)(i) of this section shall be allocated for quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act.

(ii) Beginning October 1, 2017, the increase from seven percent to eight percent in the reservation of federal funds for activities relating to the quality of child care services described in subdivision (3)(a)(ii) of this section, plus the percentage allocated as described in subdivision (4)(a)(i) of this section, which together total four percent, shall be allocated for quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act.

(iii) Beginning October 1, 2019, the increase from eight percent to nine percent in the reservation of federal funds for activities relating to the quality of child care services described in subdivision (3)(a)(iii) of this section, plus the percentage allocated as described in subdivision (4)(a)(ii) of this section, which together total five percent, shall be allocated for quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act.

(iv) After the federal fiscal year beginning on October 1, 2019, five percent of federal funds provided to the State of Nebraska pursuant to the Child Care and Development Block Grant Act of 1990, 42 U.S.C. 9857 et seq., as such act and sections existed on January 1, 2015, which have been reserved for activities relating to the quality of child care services as described in subdivision (3)(a)(iii) of this section, shall be allocated for quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act.

(b) Beginning October 1, 2016, the three-percent reservation of federal funds for activities relating to the quality of care for infants and toddlers described in subdivision (3)(b) of this section shall be allocated for providing grants to

programs described in section 79-1104.02 that enter into agreements with child care providers.

(c) Funds distributed pursuant to this subsection shall comply with federal regulations contained in 45 C.F.R. 98.11, as such regulations existed on January 1, 2015.

(d) Nothing in this section shall prohibit the Department of Health and Human Services from allocating additional percentages of the child care and development block grant or other dollar amounts for activities relating to the quality of child care services or the quality of care for infants and toddlers.

Source: Laws 1991, LB 836, § 21; Laws 2015, LB547, § 1.

Effective date August 30, 2015.

Cross References

Step Up to Quality Child Care Act, see section 71-1952.

ARTICLE 29

PARENTING ACT

Section

- | | |
|-------------|---|
| 43-2922. | Terms, defined. |
| 43-2929. | Parenting plan; developed; approved by court; contents. |
| 43-2929.01. | Repealed. Laws 2015, LB 219, § 35. |

43-2922 Terms, defined.

For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

(2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;

(3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923 or the Uniform Deployed Parents Custody and Visitation Act if such act applies;

(4) Child means a minor under nineteen years of age;

(5) Child abuse or neglect has the same meaning as in section 28-710;

(6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or house-

hold members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator meeting the qualifications of section 43-2938 and acting in accordance with the Parenting Act;

(16) Office of Dispute Resolution means the office established under section 25-2904;

(17) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(18) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(19) Parenting time, visitation, or other access means communication or time spent between the child and parent or stepparent, the child and a court-appointed guardian, or the child and another family member or members including stepbrothers or stepsisters;

(20) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(21) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(22) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(23) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(24) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(25) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Source: Laws 2007, LB554, § 3; Laws 2008, LB1014, § 55; Laws 2011, LB673, § 3; Laws 2015, LB219, § 31.
Operative date January 1, 2016.

Cross References

Conciliation Court Law, see section 42-802.

Uniform Deployed Parents Custody and Visitation Act, see section 43-4601.

43-2929 Parenting plan; developed; approved by court; contents.

(1) In any proceeding in which parenting functions for a child are at issue under Chapter 42, a parenting plan shall be developed and shall be approved by the court. Court rule may provide for the parenting plan to be developed by the parties or their counsel, a court conciliation program, an approved mediation center, or a private mediator. When a parenting plan has not been developed and submitted to the court, the court shall create the parenting plan in accordance with the Parenting Act. A parenting plan shall serve the best interests of the child pursuant to sections 42-364 and 43-2923 or the Uniform Deployed Parents Custody and Visitation Act if such act applies and shall:

(a) Assist in developing a restructured family that serves the best interests of the child by accomplishing the parenting functions; and

(b) Include, but not be limited to, determinations of the following:

(i) Legal custody and physical custody of each child;

(ii) Apportionment of parenting time, visitation, or other access for each child, including, but not limited to, specified religious and secular holidays, birthdays, Mother's Day, Father's Day, school and family vacations, and other special occasions, specifying dates and times for the same, or a formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court, and set out appropriate times and numbers for telephone access;

(iii) Location of the child during the week, weekend, and given days during the year;

(iv) A transition plan, including the time and places for transfer of the child, method of communication or amount and type of contact between the parties during transfers, and duties related to transportation of the child during transfers;

(v) Procedures for making decisions regarding the day-to-day care and control of the child consistent with the major decisions made by the person or persons who have legal custody and responsibility for parenting functions;

(vi) Provisions for a remediation process regarding future modifications to such plan;

(vii) Arrangements to maximize the safety of all parties and the child;

(viii) Provisions to ensure regular and continuous school attendance and progress for school-age children of the parties; and

(ix) Provisions for safety when a preponderance of the evidence establishes child abuse or neglect, domestic intimate partner abuse, unresolved parental conflict, or criminal activity which is directly harmful to a child.

(2) A parenting plan shall require that the parties notify each other of a change of address, except that the address or return address shall only include the county and state for a party who is living or moving to an undisclosed location because of safety concerns.

(3) When safe and appropriate for the best interests of the child, the parenting plan may encourage mutual discussion of major decisions regarding parenting functions including the child's education, health care, and spiritual or religious upbringing. However, when a prior factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been made, then consideration shall be given to inclusion of

provisions for safety and a transition plan that restrict communication or the amount and type of contact between the parties during transfers.

(4) Regardless of the custody determinations in the parenting plan, unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(5) In the development of a parenting plan, consideration shall be given to the child's age, the child's developmental needs, and the child's perspective, as well as consideration of enhancing healthy relationships between the child and each party.

Source: Laws 2007, LB554, § 10; Laws 2008, LB1014, § 60; Laws 2011, LB673, § 5; Laws 2015, LB219, § 32.
Operative date January 1, 2016.

Cross References

Uniform Deployed Parents Custody and Visitation Act, see section 43-4601.

43-2929.01 Repealed. Laws 2015, LB 219, § 35.
Operative date January 1, 2016.

ARTICLE 30

ACCESS TO INFORMATION AND RECORDS

Section

43-3001. Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

43-3001 Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

(1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, school personnel, county attorneys, the Attorney General, law enforcement agencies, child advocacy centers, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Department of Correctional Services, the Foster Care Review Office, local foster care review boards, child abuse and neglect investigation teams, child abuse and neglect treatment teams, or other multidisciplinary teams for abuse, neglect, or delinquency concerning a child who is in the custody of the state may be shared with individuals and agencies who have been identified in a court order authorized by this section.

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive otherwise confidential information concerning the child for legitimate and official purposes. The individuals and agencies who may be identified in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, the Attorney General, authorized court personnel, law enforcement agencies, state probation personnel,

state parole personnel, youth detention facilities, medical personnel, court appointed special advocate volunteers, treatment or placement programs, the Department of Health and Human Services, the Office of Juvenile Services, the Department of Correctional Services, the Foster Care Review Office, local foster care review boards, the office of Inspector General of Nebraska Child Welfare, child abuse and neglect investigation teams, child abuse and neglect treatment teams, other multidisciplinary teams for abuse, neglect, or delinquency, and other individuals and agencies for which the court specifically finds, in writing, that it would be in the best interest of the juvenile to receive such information. Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or supervision of the court or until a new order is issued.

(3) All information acquired by an individual or agency pursuant to this section shall be confidential and shall not be disclosed except to other persons who have a legitimate and official interest in the information and are identified in the court order issued pursuant to this section with respect to the child in question. A person who receives such information or who cooperates in good faith with other individuals and agencies identified in the appropriate court order by providing information or records about a child shall be immune from any civil or criminal liability. The provisions of this section granting immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(5) Except as provided in subsection (4) of this section, any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

Source: Laws 1993, LB 719, § 1; Laws 1994, LB 988, § 27; Laws 1996, LB 1044, § 233; Laws 2006, LB 1113, § 42; Laws 2008, LB1014, § 67; Laws 2009, LB35, § 29; Laws 2012, LB998, § 17; Laws 2015, LB347, § 3.

Effective date August 30, 2015.

ARTICLE 42

NEBRASKA CHILDREN'S COMMISSION

Section

43-4202. Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant; termination of commission.

43-4207. Nebraska Children's Commission; reports.

43-4202 Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant; termination of commission.

(1) The Nebraska Children's Commission is created as a high-level leadership body to (a) create a statewide strategic plan for reform of the child welfare system programs and services in the State of Nebraska and (b) review the operations of the Department of Health and Human Services regarding child welfare programs and services and recommend, as a part of the statewide strategic plan, options for attaining the legislative intent stated in section 43-4201, either by the establishment of a new division within the department or

the establishment of a new state agency to provide all child welfare programs and services which are the responsibility of the state. The commission shall provide a permanent forum for collaboration among state, local, community, public, and private stakeholders in child welfare programs and services.

(2) The commission shall include the following voting members:

(a) The executive director of the Foster Care Review Office; and

(b) Seventeen members appointed by the Governor. The members appointed pursuant to this subdivision shall represent stakeholders in the child welfare system and shall include: (i) A director of a child advocacy center; (ii) an administrator of a behavioral health region established pursuant to section 71-807; (iii) a community representative from each of the service areas designated pursuant to section 81-3116. In the eastern service area designated pursuant to such section, the representative may be from a lead agency of a pilot project established under section 68-1212 or a collaborative member; (iv) a prosecuting attorney who practices in juvenile court; (v) a guardian ad litem; (vi) a biological parent currently or previously involved in the child welfare system; (vii) a foster parent; (viii) a court appointed special advocate volunteer; (ix) a member of a local foster care review board; (x) a child welfare service agency that directly provides a wide range of child welfare services and is not a member of a lead agency collaborative; (xi) a young adult previously in foster care; (xii) a representative of a child advocacy organization that deals with legal and policy issues that include child welfare; and (xiii) a representative of a federally recognized Indian tribe residing within the State of Nebraska and appointed within thirty days after June 5, 2013, from a list of three nominees submitted by the Commission on Indian Affairs.

(3) The Nebraska Children's Commission shall have the following nonvoting, ex officio members: (a) The chairperson of the Health and Human Services Committee of the Legislature or a committee member designated by the chairperson; (b) the chairperson of the Judiciary Committee of the Legislature or a committee member designated by the chairperson; (c) the chairperson of the Appropriations Committee of the Legislature or a committee member designated by the chairperson; (d) three persons appointed by the State Court Administrator; (e) the chief executive officer of the Department of Health and Human Services or his or her designee; (f) the Director of Children and Family Services of the Division of Children and Family Services of the Department of Health and Human Services or his or her designee; (g) the Commissioner of Education or his or her designee; and (h) the Inspector General of Nebraska Child Welfare. The nonvoting, ex officio members may attend commission meetings and participate in the discussions of the commission, provide information to the commission on the policies, programs, and processes of each of their respective bodies, gather information for the commission, and provide information back to their respective bodies from the commission. The nonvoting, ex officio members shall not vote on decisions by the commission or on the direction or development of the statewide strategic plan pursuant to section 43-4204.

(4) The commission shall meet within sixty days after April 12, 2012, and shall select from among its members a chairperson and vice-chairperson and conduct any other business necessary to the organization of the commission. The commission shall meet not less often than once every three months, and meetings of the commission may be held at any time on the call of the

chairperson. The commission may hire staff to carry out the responsibilities of the commission. For administrative purposes, the offices of the staff of the commission shall be located in the Foster Care Review Office. The commission shall hire a consultant with experience in facilitating strategic planning to provide neutral, independent assistance in developing the statewide strategic plan. The commission shall terminate on June 30, 2016, unless continued by the Legislature.

(5) The commission, with assistance from the executive director of the Foster Care Review Office, shall employ a policy analyst to provide research and expertise to the commission relating to the child welfare system. The policy analyst shall work in conjunction with the staff of the commission. His or her responsibilities may include, but are not limited to: (a) Monitoring the Nebraska child welfare system and juvenile justice system to provide information to the commission; (b) analyzing child welfare and juvenile justice public policy through research and literature reviews and drafting policy reports when requested; (c) managing or leading projects or tasks and providing resource support to commission members and committees as determined by the chairperson of the commission; (d) serving as liaison among child welfare and juvenile justice stakeholders and the public and responding to information inquiries as required; and (e) other duties as assigned by the commission.

(6) Members of the commission shall be reimbursed for their actual and necessary expenses as members of such commission as provided in sections 81-1174 to 81-1177.

Source: Laws 2012, LB821, § 2; Laws 2013, LB269, § 5; Laws 2013, LB530, § 5; Laws 2015, LB87, § 1.
Effective date August 30, 2015.

43-4207 Nebraska Children's Commission; reports.

The Nebraska Children's Commission shall provide a written report to the Governor and an electronic report to the Health and Human Services Committee of the Legislature of its activities during the previous year on or before December 1, 2015. If the commission is continued by the Legislature as provided in section 43-4202, the commission shall provide such report on or before December 1 of each year the commission is continued.

Source: Laws 2012, LB821, § 7; Laws 2015, LB87, § 2.
Effective date August 30, 2015.

ARTICLE 43

OFFICE OF INSPECTOR GENERAL OF NEBRASKA CHILD WELFARE ACT

Section

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| 43-4301. | Act, how cited. |
| 43-4302. | Legislative intent. |
| 43-4303. | Definitions; where found. |
| 43-4304. | Administrator, defined. |
| 43-4304.01. | Child welfare system, defined. |
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§ 43-4301**INFANTS AND JUVENILES**

Section

- 43-4319. Office; access to information and personnel; investigation; procedure.
43-4320. Complaints to office; form; full investigation; when; notice.
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43-4324. Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.
43-4325. Reports of investigations; distribution; redact confidential information; powers of office.
43-4326. Department, juvenile services division, and commission; provide direct computer access.
43-4327. Inspector General's report of investigation; contents; distribution.
43-4328. Report; director, probation administrator, or executive director; accept, reject, or request modification; when final; written response; corrected report; credentialing issue; how treated.
43-4330. Inspector General; investigation of complaints; priority and selection.
43-4331. Summary of reports and investigations; contents.

43-4301 Act, how cited.

Sections 43-4301 to 43-4331 shall be known and may be cited as the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 8; Laws 2015, LB347, § 4.
Effective date August 30, 2015.

43-4302 Legislative intent.

(1) It is the intent of the Legislature to:

(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska child welfare system;

(b) Assist in improving operations of the Nebraska child welfare system;

(c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the care and protection of children and youth in the Nebraska child welfare system. Confusion of the roles, responsibilities, and accountability structures between individuals, private contractors, branches of government, and agencies in the current system make it difficult to monitor and oversee the Nebraska child welfare system; and

(d) Provide a process for investigation and review to determine if individual complaints and issues of investigation and inquiry reveal a problem in the child welfare system, not just individual cases, that necessitates legislative action for improved policies and restructuring of the child welfare system.

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of Nebraska Child Welfare Act to interfere with the duties of the Legislative Auditor or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state government, except that the act does not preclude an inquiry on the sole basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogatives of the Governor to investigate, monitor, and report on the activities of the agencies, boards, bureaus, commissions, associations, societies, and institutions of the executive branch under his or her administrative direction.

Source: Laws 2012, LB821, § 9; Laws 2013, LB39, § 1; Laws 2015, LB347, § 5.
Effective date August 30, 2015.

43-4303 Definitions; where found.

For purposes of the Office of Inspector General of Nebraska Child Welfare Act, the definitions found in sections 43-4304 to 43-4316 apply.

Source: Laws 2012, LB821, § 10; Laws 2015, LB347, § 6.
Effective date August 30, 2015.

43-4304 Administrator, defined.

Administrator means a person charged with administration of a program, an office, or a division of the department or administration of a private agency or licensed child care facility, the probation administrator, or the executive director.

Source: Laws 2012, LB821, § 11; Laws 2015, LB347, § 7.
Effective date August 30, 2015.

43-4304.01 Child welfare system, defined.

Child welfare system means public and private agencies and parties that provide or effect services or supervision to system-involved children and their families.

Source: Laws 2015, LB347, § 8.
Effective date August 30, 2015.

43-4304.02 Commission, defined.

Commission means the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 2015, LB347, § 9.
Effective date August 30, 2015.

43-4306.01 Executive director, defined.

Executive director means the executive director of the commission.

Source: Laws 2015, LB347, § 10.
Effective date August 30, 2015.

43-4307.01 Juvenile services division, defined.

Juvenile services division means the Juvenile Services Division of the Office of Probation Administration.

Source: Laws 2015, LB347, § 11.
Effective date August 30, 2015.

43-4316 Responsible individual, defined.

Responsible individual means a foster parent, a relative provider of foster care, or an employee of the department, the juvenile services division, the commission, a foster home, a private agency, a licensed child care facility, or another provider of child welfare programs and services responsible for the care or custody of records, documents, and files.

Source: Laws 2012, LB821, § 23; Laws 2015, LB347, § 12.
Effective date August 30, 2015.

43-4318 Office; duties; reports of death or serious injury; when required; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of:

(i) The department by an employee of or person under contract with the department, a private agency, a licensed child care facility, a foster parent, or any other provider of child welfare services or which may provide a basis for discipline pursuant to the Uniform Credentialing Act;

(ii) The juvenile services division by an employee of or person under contract with the juvenile services division, a private agency, a licensed facility, a foster parent, or any other provider of juvenile justice services;

(iii) The commission by an employee of or person under contract with the commission related to programs and services supported by the Nebraska County Juvenile Services Plan Act, the Community-based Juvenile Services Aid Program, juvenile pretrial diversion programs, or inspections of juvenile facilities; and

(iv) A juvenile detention facility and staff secure juvenile facility by an employee of or person under contract with such facilities;

(b) Death or serious injury in foster homes, private agencies, child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other programs and facilities licensed by or under contract with the department or the juvenile services division; and

(c) Death or serious injury in any case in which services are provided by the department or the juvenile services division to a child or his or her parents or any case involving an investigation under the Child Protection and Family Safety Act, which case has been open for one year or less and upon review determines the death or serious injury did not occur by chance.

The department, the juvenile services division, each juvenile detention facility, and each staff secure juvenile facility shall report all cases of death or serious injury of a child in a foster home, private agency, child care facility or program, or other program or facility licensed by the department or inspected through the commission to the Inspector General as soon as reasonably possible after the department or the Office of Probation Administration learns of such death or serious injury. For purposes of this subsection, serious injury means an injury or illness caused by suspected abuse, neglect, or maltreatment which leaves a child in critical or serious condition.

(2) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to the Child Protection and Family Safety Act. The Inspector General and his or her staff are subject to the reporting requirements of the Child Protection and Family Safety Act.

(3) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be

subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of Nebraska Child Welfare Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

Source: Laws 2012, LB821, § 25; Laws 2013, LB561, § 58; Laws 2014, LB853, § 28; Laws 2015, LB347, § 13.
Effective date August 30, 2015.

Cross References

Child Protection and Family Safety Act, see section 28-710.
Nebraska County Juvenile Services Plan Act, see section 43-3501.
Uniform Credentialing Act, see section 38-101.

43-4319 Office; access to information and personnel; investigation; procedure.

(1) The office shall have access to all information and personnel necessary to perform the duties of the office.

(2) A full investigation conducted by the office shall consist of retrieval of relevant records through subpoena, request, or voluntary production, review of all relevant records, and interviews of all relevant persons.

(3) For a request for confidential record information pursuant to subsection (5) of section 43-2,108 involving death or serious injury, the office may submit a written request to the probation administrator. The record information shall be provided to the office within five days after approval of the request by the Supreme Court.

Source: Laws 2012, LB821, § 26; Laws 2015, LB347, § 14.
Effective date August 30, 2015.

43-4320 Complaints to office; form; full investigation; when; notice.

(1) Complaints to the office may be made in writing. The office shall also maintain a toll-free telephone line for complaints. A complaint shall be evaluated to determine if it alleges possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations pursuant to section 43-4318. All complaints shall be evaluated to determine whether a full investigation is warranted.

(2) The office shall not conduct a full investigation of a complaint unless:

(a) The complaint alleges misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations pursuant to section 43-4318;

(b) The complaint is against a person within the jurisdiction of the office; and

(c) The allegations can be independently verified through investigation.

(3) The Inspector General shall determine within fourteen days after receipt of a complaint whether it will conduct a full investigation. A complaint alleging facts which, if verified, would provide a basis for discipline under the Uniform Credentialing Act shall be referred to the appropriate credentialing board under the act.

(4) When a full investigation is opened on a private agency that contracts with the Office of Probation Administration, the Inspector General shall give notice of such investigation to the Office of Probation Administration.

Source: Laws 2012, LB821, § 27; Laws 2013, LB561, § 59; Laws 2015, LB347, § 15.

Effective date August 30, 2015.

Cross References

Uniform Credentialing Act, see section 38-101.

43-4321 Cooperation with office; when required.

All employees of the department, the juvenile services division, or the commission, all foster parents, and all owners, operators, managers, supervisors, and employees of private agencies, licensed child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other providers of child welfare services or juvenile justice services shall cooperate with the office. Cooperation includes, but is not limited to, the following:

(1) Provision of full access to and production of records and information. Providing access to and producing records and information for the office is not a violation of confidentiality provisions under any law, statute, rule, or regulation if done in good faith for purposes of an investigation under the Office of Inspector General of Nebraska Child Welfare Act;

(2) Fair and honest disclosure of records and information reasonably requested by the office in the course of an investigation under the act;

(3) Encouraging employees to fully comply with reasonable requests of the office in the course of an investigation under the act;

(4) Prohibition of retaliation by owners, operators, or managers against employees for providing records or information or filing or otherwise making a complaint to the office;

(5) Not requiring employees to gain supervisory approval prior to filing a complaint with or providing records or information to the office;

(6) Provision of complete and truthful answers to questions posed by the office in the course of an investigation; and

(7) Not willfully interfering with or obstructing the investigation.

Source: Laws 2012, LB821, § 28; Laws 2013, LB561, § 60; Laws 2015, LB347, § 16.

Effective date August 30, 2015.

43-4324 Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.

(1) In conducting investigations, the office shall access all relevant records through subpoena, compliance with a request of the office, and voluntary production. The office may request or subpoena any record necessary for the investigation from the department, the juvenile services division, the commission, a foster parent, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, or a private agency that is pertinent to an investigation. All case files, licensing files, medical records, financial and administrative records, and records required to be maintained pursuant to applicable licensing rules shall be produced for review by the office in the course of an investigation.

(2) Compliance with a request of the office includes:

- (a) Production of all records requested;
- (b) A diligent search to ensure that all appropriate records are included; and
- (c) A continuing obligation to immediately forward to the office any relevant records received, located, or generated after the date of the request.

(3) The office shall seek access in a manner that respects the dignity and human rights of all persons involved, maintains the integrity of the investigation, and does not unnecessarily disrupt child welfare programs or services. When advance notice to a foster parent or to an administrator or his or her designee is not provided, the office investigator shall, upon arrival at the departmental office, bureau, or division, the private agency, the licensed child care facility, the juvenile detention facility, the staff secure juvenile facility, or the location of another provider of child welfare services, request that an onsite employee notify the administrator or his or her designee of the investigator's arrival.

(4) When circumstances of an investigation require, the office may make an unannounced visit to a foster home, a departmental office, bureau, or division, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, a private agency, or another provider to request records relevant to an investigation.

(5) A responsible individual or an administrator may be asked to sign a statement of record integrity and security when a record is secured by request as the result of a visit by the office, stating:

(a) That the responsible individual or the administrator has made a diligent search of the office, bureau, division, private agency, licensed child care facility, juvenile detention facility, staff secure juvenile facility, or other provider's location to determine that all appropriate records in existence at the time of the request were produced;

(b) That the responsible individual or the administrator agrees to immediately forward to the office any relevant records received, located, or generated after the visit;

(c) The persons who have had access to the records since they were secured; and

(d) Whether, to the best of the knowledge of the responsible individual or the administrator, any records were removed from or added to the record since it was secured.

(6) The office shall permit a responsible individual, an administrator, or an employee of a departmental office, bureau, or division, a private agency, a licensed child care facility, a juvenile detention facility, a staff secure juvenile

facility, or another provider to make photocopies of the original records within a reasonable time in the presence of the office for purposes of creating a working record in a manner that assures confidentiality.

(7) The office shall present to the responsible individual or the administrator or other employee of the departmental office, bureau, or division, private agency, licensed child care facility, juvenile detention facility, staff secure juvenile facility, or other service provider a copy of the request, stating the date and the titles of the records received.

(8) If an original record is provided during an investigation, the office shall return the original record as soon as practical but no later than ten working days after the date of the compliance request.

(9) All investigations conducted by the office shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

Source: Laws 2012, LB821, § 31; Laws 2013, LB561, § 61; Laws 2015, LB347, § 17.
Effective date August 30, 2015.

43-4325 Reports of investigations; distribution; redact confidential information; powers of office.

(1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) Except when a report is provided to a guardian ad litem or an attorney in the juvenile court pursuant to subsection (2) of section 43-4327, the office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to the chairperson of the Health and Human Services Committee of the Legislature or the chairperson of the Judiciary Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska child welfare system.

(3) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(4) The office may withhold the identity of sources of information to protect from retaliation any person who files a complaint or provides information in good faith pursuant to the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 32; Laws 2015, LB347, § 18.
Effective date August 30, 2015.

43-4326 Department, juvenile services division, and commission; provide direct computer access.

(1) The department shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and

documents maintained by the department in connection with administration of the Nebraska child welfare system.

(2) The juvenile services division and the commission shall provide the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the juvenile services division in connection with administration of juvenile justice services.

Source: Laws 2012, LB821, § 33; Laws 2015, LB347, § 19.
Effective date August 30, 2015.

43-4327 Inspector General's report of investigation; contents; distribution.

(1) The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of employees or for sanctions against a foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services. All recommendations to pursue discipline shall be in writing and signed by the Inspector General. A report of an investigation shall be presented to the director, the probation administrator, or the executive director within fifteen days after the report is presented to the Public Counsel.

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report. The Inspector General, upon notifying the Public Counsel and the director, the probation administrator, or the executive director, may distribute the report, to the extent that it is relevant to a child's welfare, to the guardian ad litem and attorneys in the juvenile court in which a case is pending involving the child or family who is the subject of the report. The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

(3) A report that identifies misconduct, misfeasance, malfeasance, or violation of statute, rules, or regulations by an employee of the department, the juvenile services division, the commission, a private agency, a licensed child care facility, or another provider that is relevant to providing appropriate supervision of an employee may be shared with the employer of such employee. The employer may not further distribute the report or any confidential information contained in the report.

Source: Laws 2012, LB821, § 34; Laws 2015, LB347, § 20.
Effective date August 30, 2015.

43-4328 Report; director, probation administrator, or executive director; accept, reject, or request modification; when final; written response; corrected report; credentialing issue; how treated.

(1) Within fifteen days after a report is presented to the director, the probation administrator, or the executive director under section 43-4327, he or she shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The Inspector General, with input from the Public Counsel, may consider the director's, probation administrator's, or executive director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director, the probation administrator, or the executive director to accept or

reject the recommendations in the report or, if the director, the probation administrator, or the executive director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) Within fifteen days after the report is presented to the director, the probation administrator, or the executive director, the report shall be presented to the foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within forty-five days after receipt of the report, the foster parent, private agency, licensed child care facility, or other provider may submit a written response to the office to correct any factual errors in the report. The Inspector General, with input from the Public Counsel, shall consider all materials submitted under this subsection to determine whether a corrected report shall be issued. If the Inspector General determines that a corrected report is necessary, the corrected report shall be issued within fifteen days after receipt of the written response.

(3) If the Inspector General does not issue a corrected report pursuant to subsection (2) of this section, or if the corrected report does not address all issues raised in the written response, the foster parent, private agency, licensed child care facility, or other provider may request that its written response, or portions of the response, be appended to the report or corrected report.

(4) A report which raises issues related to credentialing under the Uniform Credentialing Act shall be submitted to the appropriate credentialing board under the act.

Source: Laws 2012, LB821, § 35; Laws 2015, LB347, § 21.
Effective date August 30, 2015.

Cross References

Uniform Credentialing Act, see section 38-101.

43-4330 Inspector General; investigation of complaints; priority and selection.

The Office of Inspector General of Nebraska Child Welfare Act does not require the Inspector General to investigate all complaints. The Inspector General, with input from the Public Counsel, shall prioritize and select investigations and inquiries that further the intent of the act and assist in legislative oversight of the Nebraska child welfare system and juvenile justice system. If the Inspector General determines that he or she will not investigate a complaint, the Inspector General may recommend to the parties alternative means of resolution of the issues in the complaint.

Source: Laws 2012, LB821, § 37; Laws 2015, LB347, § 22.
Effective date August 30, 2015.

43-4331 Summary of reports and investigations; contents.

On or before September 15 of each year, the Inspector General shall provide to the Health and Human Services Committee of the Legislature, the Judiciary Committee of the Legislature, the Supreme Court, and the Governor a summary of reports and investigations made under the Office of Inspector General of Nebraska Child Welfare Act for the preceding year. The summary provided

to the committees shall be provided electronically. The summaries shall detail recommendations and the status of implementation of recommendations and may also include recommendations to the committees regarding issues discovered through investigation, audits, inspections, and reviews by the office that will increase accountability and legislative oversight of the Nebraska child welfare system, improve operations of the department, the juvenile services division, the commission, and the Nebraska child welfare system, or deter and identify fraud, abuse, and illegal acts. Such summary shall include summaries of alternative response cases under alternative response demonstration projects implemented in accordance with sections 28-710.01, 28-712, and 28-712.01 reviewed by the Inspector General. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

Source: Laws 2012, LB821, § 38; Laws 2013, LB222, § 12; Laws 2014, LB853, § 29; Laws 2015, LB347, § 23.
Effective date August 30, 2015.

ARTICLE 45

YOUNG ADULT BRIDGE TO INDEPENDENCE ACT

- Section 43-4501. Act, how cited.
- 43-4503. Terms, defined.
- 43-4504. Bridge to independence program; availability.
- 43-4505. Extended services and support; services enumerated.
- 43-4506. Participation in bridge to independence program; voluntary services and support agreement; contents; services provided; independence coordinator; department; duties.
- 43-4508. Department; filing with juvenile court; contents; jurisdiction of court; bridge to independence program file; hearing for permanency review; appointment of hearing officer; department; duties; court review services and support; confidentiality; waiver.
- 43-4511. Extended guardianship assistance and medical care; eligibility; use.
- 43-4511.01. Participation in extended guardianship or bridge to independence program; choice of participant; notice; contents; department; duties.
- 43-4512. Extended adoption assistance and medical care; eligibility; use.
- 43-4513. Bridge to Independence Advisory Committee; members; terms; duties; meetings; report; contents.
- 43-4514. Department; submit amended state plan amendment to seek federal funding; department; duties; rules and regulations; references to United States Code; how construed.

43-4501 Act, how cited.

Sections 43-4501 to 43-4514 shall be known and may be cited as the Young Adult Bridge to Independence Act.

Source: Laws 2013, LB216, § 1; Laws 2014, LB853, § 30; Laws 2015, LB243, § 14.
Operative date May 28, 2015.

43-4503 Terms, defined.

For purposes of the Young Adult Bridge to Independence Act:

(1) Bridge to independence program means the extended services and support available to a young adult under the Young Adult Bridge to Independence

Act other than extended guardianship assistance described in section 43-4511 and extended adoption assistance described in section 43-4512;

(2) Child means an individual who has not attained twenty-one years of age;

(3) Department means the Department of Health and Human Services;

(4) Supervised independent living setting means an independent supervised setting, consistent with 42 U.S.C. 672(c). Supervised independent living settings shall include, but not be limited to, single or shared apartments, houses, host homes, college dormitories, or other postsecondary educational or vocational housing;

(5) Voluntary services and support agreement means a voluntary placement agreement as defined in 42 U.S.C. 672(f) between the department and a young adult as his or her own guardian; and

(6) Young adult means an individual who has attained nineteen years of age but who has not attained twenty-one years of age.

Source: Laws 2013, LB216, § 3; Laws 2014, LB853, § 32; Laws 2015, LB243, § 15.

Operative date May 28, 2015.

43-4504 Bridge to independence program; availability.

The bridge to independence program is available, on a voluntary basis, to a young adult:

(1) Who has attained at least nineteen years of age;

(2) Who was adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 or the equivalent under tribal law and (a) upon attaining nineteen years of age, was in an out-of-home placement or had been discharged to independent living or (b) with respect to whom a kinship guardianship assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective; and

(3) Who is:

(a) Completing secondary education or an educational program leading to an equivalent credential;

(b) Enrolled in an institution which provides postsecondary or vocational education;

(c) Employed for at least eighty hours per month;

(d) Participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) Incapable of doing any of the activities described in subdivisions (3)(a) through (d) of this section due to a medical condition, which incapacity is supported by regularly updated information in the case plan of the young adult.

The changes made to subdivision (2)(b) of this section by Laws 2015, LB243, become operative on July 1, 2015.

Source: Laws 2013, LB216, § 4; Laws 2014, LB853, § 33; Laws 2015, LB243, § 16.

Operative date May 28, 2015.

43-4505 Extended services and support; services enumerated.

Extended services and support provided under the bridge to independence program include, but are not limited to:

(1) Medical care under the medical assistance program for young adults who meet the eligibility requirements of section 43-4504 and have signed a voluntary services and support agreement as provided in section 43-4506;

(2) Housing, placement, and support in the form of foster care maintenance payments which shall remain at least at the rate set immediately prior to the young adult's exit from foster care. As decided by and with the young adult, young adults may reside in a foster family home, a supervised independent living setting, an institution, or a foster care facility. Placement in an institution or a foster care facility should occur only if necessary due to a young adult's developmental level or medical condition. A young adult who is residing in a foster care facility upon leaving foster care may choose to temporarily stay until he or she is able to transition to a more age-appropriate setting. For young adults residing in a supervised independent living setting:

(a) The department may send all or part of the foster care maintenance payments directly to the young adult. This should be decided on a case-by-case basis by and with the young adult in a manner that respects the independence of the young adult; and

(b) Rules and restrictions regarding housing options should be respectful of the young adult's autonomy and developmental maturity. Specifically, safety assessments of the living arrangements shall be age-appropriate and consistent with federal guidance on a supervised setting in which the individual lives independently. A clean background check shall not be required for an individual residing in the same residence as the young adult; and

(3) Case management services that are young-adult driven. Case management shall be a continuation of the independent living transition proposal in section 43-1311.03, including a written description of additional resources that will help the young adult in creating permanent relationships and preparing for the transition to adulthood and independent living. Case management shall include the development of a case plan, developed jointly by the department and the young adult, that includes a description of the identified housing situation or living arrangement, the resources to assist the young adult in the transition from the bridge to independence program to adulthood, and the needs listed in subsection (1) of section 43-1311.03. The case plan shall incorporate the independent living transition proposal in section 43-1311.03. A new plan shall be developed for young adults who have no previous independent living transition proposal. Case management shall also include, but not be limited to, documentation that assistance has been offered and provided that would help the young adult meet his or her individual goals, if such assistance is appropriate and if the young adult is eligible and consents to receive such assistance. This shall include, but not be limited to, assisting the young adult to:

(a) Obtain employment or other financial support;

(b) Obtain a government-issued identification card;

(c) Open and maintain a bank account;

(d) Obtain appropriate community resources, including health, mental health, developmental disability, and other disability services and support;

(e) When appropriate, satisfy any juvenile justice system requirements and assist with sealing the young adult's juvenile court record if the young adult is eligible under section 43-2,108.01;

(f) Complete secondary education;

(g) Apply for admission and aid for postsecondary education or vocational courses;

(h) Obtain the necessary state court findings and then apply for special immigrant juvenile status as defined in 8 U.S.C. 1101(a)(27)(J) or apply for other immigration relief that the young adult may be eligible for;

(i) Create a health care power of attorney, health care proxy, or other similar document recognized under state law, at the young adult's option, pursuant to the federal Patient Protection and Affordable Care Act, Public Law 111-148;

(j) Obtain a copy of health and education records of the young adult;

(k) Apply for any public benefits or benefits that he or she may be eligible for or may be due through his or her parents or relatives, including, but not limited to, aid to dependent children, supplemental security income, social security disability insurance, social security survivors benefits, the Special Supplemental Nutrition Program for Women, Infants, and Children, the Supplemental Nutrition Assistance Program, and low-income home energy assistance programs;

(l) Maintain relationships with individuals who are important to the young adult, including searching for individuals with whom the young adult has lost contact;

(m) Access information about maternal and paternal relatives, including any siblings;

(n) Access young adult empowerment opportunities, such as Project Everlast and peer support groups; and

(o) Access pregnancy and parenting resources and services.

Source: Laws 2013, LB216, § 5; Laws 2014, LB853, § 34; Laws 2015, LB243, § 17.

Operative date May 28, 2015.

43-4506 Participation in bridge to independence program; voluntary services and support agreement; contents; services provided; independence coordinator; department; duties.

(1) If a young adult chooses to participate in the bridge to independence program and is eligible under section 43-4504, the young adult and the department shall sign, and the young adult shall be provided a copy of, a voluntary services and support agreement that includes, at a minimum, information regarding all of the following:

(a) The requirement that the young adult continue to be eligible under section 43-4504 for the duration of the voluntary services and support agreement and any other expectations of the young adult;

(b) The services and support the young adult shall receive through the bridge to independence program;

(c) The voluntary nature of the young adult's participation and the young adult's right to terminate the voluntary services and support agreement at any time; and

(d) Conditions that may result in the termination of the voluntary services and support agreement and the young adult's early discharge from the bridge to independence program as described in section 43-4507.

(2) As soon as the young adult and the department sign the voluntary services and support agreement and the department determines that the young adult is eligible for the bridge to independence program under section 43-4504, but not longer than fifteen days after signing the agreement, the department shall provide services and support to the young adult in accordance with the voluntary services and support agreement.

(3) A young adult participating in the bridge to independence program shall be assigned an independence coordinator to provide case management services for the young adult. Independence coordinators and their supervisors shall be specialized in primarily providing services for young adults in the bridge to independence program or shall, at minimum, have specialized training in providing transition services and support to young adults.

(4) The department shall provide continued efforts at achieving permanency and creating permanent connections for a young adult participating in the bridge to independence program.

(5) The department shall fulfill all case plan obligations consistent with 42 U.S.C. 675(1).

(6) As soon as possible after the young adult is determined eligible for the bridge to independence program under section 43-4504 and signs the voluntary services and support agreement, the department shall conduct a determination of income eligibility for purposes of Title IV-E of the federal Social Security Act, 42 U.S.C. 672.

Source: Laws 2013, LB216, § 6; Laws 2014, LB853, § 35; Laws 2015, LB243, § 18.

Operative date May 28, 2015.

43-4508 Department; filing with juvenile court; contents; jurisdiction of court; bridge to independence program file; hearing for permanency review; appointment of hearing officer; department; duties; court review services and support; confidentiality; waiver.

(1) Within fifteen days after the voluntary services and support agreement is signed, the department shall file a petition with the juvenile court describing the young adult's current situation, including the young adult's name, date of birth, and current address and the reasons why it is in the young adult's best interests to participate in the bridge to independence program. The department shall also provide the juvenile court with a copy of the signed voluntary services and support agreement, a copy of the case plan, and any other information the department or the young adult wants the court to consider.

(2) The department shall ensure continuity of care and eligibility by working with a child who wants to participate in the bridge to independence program and is likely to be eligible to participate in such program immediately following the termination of the juvenile court's jurisdiction pursuant to subdivision (3)(a) of section 43-247. The voluntary services and support agreement shall be signed and the petition filed with the court upon the child's nineteenth birthday or within ten days thereafter. There shall be no interruption in the foster care maintenance payment and medical assistance coverage for a child who is

eligible and chooses to participate in the bridge to independence program immediately following the termination of the juvenile court's jurisdiction pursuant to such subdivision.

(3) The court has the jurisdiction to review the voluntary services and support agreement signed by the department and the young adult under section 43-4506 and to conduct permanency reviews as described in this section. Upon the filing of a petition under subsection (1) of this section, the court shall open a bridge to independence program file for the young adult for the purpose of determining whether continuing in such program is in the young adult's best interests and for the purpose of conducting permanency reviews.

(4) The court shall make the best interests determination as described in subsection (3) of this section not later than one hundred eighty days after the young adult and the department enter into the voluntary services and support agreement.

(5) The court shall conduct a hearing for permanency review consistent with 42 U.S.C. 675(5)(C) as described in subsection (6) of this section regarding the voluntary services and support agreement at least once per year and may conduct such hearing at additional times, but not more times than is reasonably practicable, at the request of the young adult, the department, or any other party to the proceeding. Upon the filing of the petition as provided in subsection (1) of this section or anytime thereafter, the young adult may request, in the voluntary services and support agreement or by other appropriate means, a timeframe in which the young adult prefers to have the permanency review hearing scheduled and the court shall seek to accommodate the request as practicable and consistent with 42 U.S.C. 675(5)(C). The juvenile court may request the appointment of a hearing officer pursuant to section 24-230 to conduct permanency review hearings. The department is not required to have legal counsel present at such hearings. The juvenile court shall conduct the permanency reviews in an expedited manner and shall issue findings and orders, if any, as speedily as possible.

(6)(a) The primary purpose of the permanency review is to ensure that the bridge to independence program is providing the young adult with the needed services and support to help the young adult move toward permanency and self-sufficiency. This shall include that, in all permanency reviews or hearings regarding the transition of the young adult from foster care to independent living, the court shall consult, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult. The young adult shall have a clear self-advocacy role in the permanency review in accordance with section 43-4510, and the hearing shall support the active engagement of the young adult in key decisions. Permanency reviews shall be conducted on the record and in an informal manner and, whenever possible, outside of the courtroom.

(b) The department shall prepare and present to the juvenile court a report, at the direction of the young adult, addressing progress made in meeting the goals in the case plan, including the independent living transition proposal, and shall propose modifications as necessary to further those goals.

(c) The court shall determine whether the bridge to independence program is providing the appropriate services and support as provided in the voluntary services and support agreement to carry out the case plan. The court has the authority to determine whether the young adult is receiving the services and

support he or she is entitled to receive under the Young Adult Bridge to Independence Act and the department's policies or state or federal law to help the young adult move toward permanency and self-sufficiency. If the court believes that the young adult requires additional services and support to achieve the goals documented in the case plan or under the Young Adult Bridge to Independence Act and the department's policies or state or federal law, the court may make appropriate findings or order the department to take action to ensure that the young adult receives the identified services and support.

(7) All pleadings, filings, documents, and reports filed pursuant to this section and subdivision (11) of section 43-247 shall be confidential. The proceedings pursuant to this section and subdivision (11) of section 43-247 shall be confidential unless a young adult provides a written waiver or a verbal waiver in court. Such waiver may be made by the young adult in order to permit the proceedings to be held outside of the courtroom or for any other reason. The Foster Care Review Office shall have access to any and all pleadings, filings, documents, reports, and proceedings necessary to complete its case review process. This section shall not prevent the juvenile court from issuing an order identifying individuals and agencies who shall be allowed to receive otherwise confidential information for legitimate and official purposes as authorized by section 43-3001.

Source: Laws 2013, LB216, § 8; Laws 2014, LB853, § 37; Laws 2015, LB243, § 19.

Operative date May 28, 2015.

43-4511 Extended guardianship assistance and medical care; eligibility; use.

(1) The department shall provide extended guardianship assistance and medical care under the medical assistance program for a young adult who is at least nineteen years of age but less than twenty-one years of age and with respect to whom a kinship guardianship assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective and if the young adult meets at least one of the following conditions for eligibility:

(a) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(b) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(c) The young adult is employed for at least eighty hours per month;

(d) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) The young adult is incapable of doing any part of the activities in subdivisions (1)(a) through (d) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

(2) The guardian shall ensure that any guardianship assistance funds provided by the department and received by the guardian shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

(3) The changes made to this section by Laws 2015, LB243, become operative on July 1, 2015.

Source: Laws 2013, LB216, § 11; Laws 2014, LB853, § 41; Laws 2015, LB243, § 20.

Operative date May 28, 2015.

43-4511.01 Participation in extended guardianship or bridge to independence program; choice of participant; notice; contents; department; duties.

(1) Young adults who are eligible to participate under both extended guardianship assistance as provided in section 43-4511 and the bridge to independence program as provided in subdivision (2)(b) of section 43-4504 may choose to participate in either program.

(2) The department shall create a clear and developmentally appropriate written notice discussing the rights of young adults who are eligible under both extended guardianship assistance and the bridge to independence program. The notice shall explain the benefits and responsibilities and the process to apply. The department shall provide the written notice and make efforts to provide a verbal explanation to a young adult with respect to whom a kinship guardianship assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective. The department shall provide the notice yearly thereafter until such young adult reaches nineteen years of age and not later than ninety days prior to the young adult attaining nineteen years of age.

Source: Laws 2015, LB243, § 21.

Operative date May 28, 2015.

43-4512 Extended adoption assistance and medical care; eligibility; use.

(1) The department shall provide extended adoption assistance and medical care under the medical assistance program for a young adult who is at least nineteen years of age but less than twenty-one years of age and with respect to whom an adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective and who meets at least one of the following conditions of eligibility:

(a) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(b) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(c) The young adult is employed for at least eighty hours per month;

(d) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) The young adult is incapable of doing any part of the activities in subdivisions (1)(a) through (d) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

(2) The adoptive parent or parents shall ensure that any adoption assistance funds provided by the department and received by the adoptive parent shall be used for the benefit of the young adult. The department shall adopt and

promulgate rules and regulations defining services and supports encompassed by such benefit.

Source: Laws 2013, LB216, § 12; Laws 2014, LB853, § 42; Laws 2015, LB243, § 22.

Operative date May 28, 2015.

43-4513 Bridge to Independence Advisory Committee; members; terms; duties; meetings; report; contents.

(1) On or before July 1, 2013, the Nebraska Children's Commission shall appoint a Bridge to Independence Advisory Committee to make recommendations to the department and the Nebraska Children's Commission regarding the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512. The Bridge to Independence Advisory Committee shall meet on a biannual basis to advise the department and the Nebraska Children's Commission regarding ongoing implementation of the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 and shall provide a written report regarding ongoing implementation, including participation in the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 and early discharge rates and reasons obtained from the department, to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the department, and the Governor by December 15th of each year. By December 15, 2015, the committee shall develop specific recommendations for expanding to or improving outcomes for similar groups of at-risk young adults. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

(2) The members of the Bridge to Independence Advisory Committee shall include, but not be limited to, (a) representatives from all three branches of government, and the representatives from the legislative and judicial branches of government shall be nonvoting, ex officio members, (b) no less than three young adults currently or previously in foster care, which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) one or more representatives from a child welfare advocacy organization, (d) one or more representatives from a child welfare service agency, and (e) one or more representatives from an agency providing independent living services.

(3) Members of the committee shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint the chairperson of the committee and may fill vacancies on the committee as they occur.

Source: Laws 2013, LB216, § 13; Laws 2014, LB853, § 43; Laws 2015, LB243, § 23.

Operative date May 28, 2015.

43-4514 Department; submit amended state plan amendment to seek federal funding; department; duties; rules and regulations; references to United States Code; how construed.

(1) The department shall submit an amended state plan amendment by October 15, 2015, to seek federal Title IV-E funding under 42 U.S.C. 672 for

newly eligible young adults with respect to whom a kinship guardianship assistance agreement was in effect pursuant to 42 U.S.C. 673 if the child had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement was in effect if the child had attained sixteen years of age before the agreement became effective pursuant to subdivision (2)(b) of section 43-4504.

(2) The department shall implement the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 in accordance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. 673 and 42 U.S.C. 675(8)(B) and in accordance with requirements necessary to obtain federal Title IV-E funding under 42 U.S.C. 672 and 42 U.S.C. 673.

(3) The department shall adopt and promulgate rules and regulations as needed to carry out this section by October 15, 2015.

(4) All references to the United States Code in the Young Adult Bridge to Independence Act refer to sections of the code as such sections existed on January 1, 2015.

Source: Laws 2013, LB216, § 14; Laws 2014, LB853, § 44; Laws 2015, LB243, § 24.
Operative date May 28, 2015.

ARTICLE 46

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

PART 1. GENERAL PROVISIONS

Section

- 43-4601. Act, how cited.
- 43-4602. Terms, defined.
- 43-4603. Remedies for noncompliance.
- 43-4604. Jurisdiction.
- 43-4605. Notification required of deploying parent.
- 43-4606. Duty to notify of change of address.
- 43-4607. General consideration in custody proceeding of parent’s military service.

PART 2. AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

- 43-4608. Form of agreement.
- 43-4609. Nature of authority created by agreement.
- 43-4610. Modification of agreement.
- 43-4611. Power of attorney.
- 43-4612. Filing agreement or power of attorney with court.

PART 3. JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

- 43-4613. Close and substantial relationship, defined.
- 43-4614. Proceeding for temporary custody order.
- 43-4615. Expedited hearing.
- 43-4616. Testimony by electronic means.
- 43-4617. Effect of prior judicial order or agreement.
- 43-4618. Grant of caretaking or decisionmaking authority to nonparent.
- 43-4619. Grant of limited contact.
- 43-4620. Nature of authority created by temporary custody order.
- 43-4621. Content of temporary custody order.
- 43-4622. Order for child support.
- 43-4623. Modifying or terminating grant of custodial responsibility to nonparent.

Section

PART 4. RETURN FROM DEPLOYMENT

- 43-4624. Procedure for terminating temporary grant of custodial responsibility established by agreement.
- 43-4625. Consent procedure for terminating temporary grant of custodial responsibility established by court order.
- 43-4626. Visitation before termination of temporary grant of custodial responsibility.
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PART 5. MISCELLANEOUS PROVISIONS

- 43-4628. Uniformity of application and construction.
- 43-4629. Relation to Electronic Signatures in Global and National Commerce Act.
- 43-4630. Savings clause.

PART 1. GENERAL PROVISIONS

43-4601 Act, how cited.

Sections 43-4601 to 43-4630 shall be known and may be cited as the Uniform Deployed Parents Custody and Visitation Act.

Source: Laws 2015, LB219, § 1.

Operative date January 1, 2016.

43-4602 Terms, defined.

In the Uniform Deployed Parents Custody and Visitation Act:

(1) Adult means an individual who has attained nineteen years of age or an emancipated minor;

(2) Caretaking authority means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation;

(3) Child means:

(A) an unemancipated individual who has not attained nineteen years of age; or

(B) an adult son or daughter by birth or adoption, or under law of this state other than the act, who is the subject of a court order concerning custodial responsibility;

(4) Court means a tribunal, including an administrative agency, authorized under law of this state other than the act to make, enforce, or modify a decision regarding custodial responsibility;

(5) Custodial responsibility includes all powers and duties relating to caretaking authority and decisionmaking authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child;

(6) Decisionmaking authority means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority;

(7) Deploying parent means a service member, who is deployed or has been notified of impending deployment, and is:

- (A) a parent of a child under law of this state other than the act; or
 - (B) an individual who has custodial responsibility for a child under law of this state other than the act;
- (8) Deployment means the movement or mobilization of a service member for more than ninety days but less than eighteen months pursuant to uniformed service orders that:
- (A) are designated as unaccompanied;
 - (B) do not authorize dependent travel; or
 - (C) otherwise do not permit the movement of family members to the location to which the service member is deployed;
- (9) Family member means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than the act;
- (10) Limited contact means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child;
- (11) Nonparent means an individual other than a deploying parent or other parent;
- (12) Other parent means an individual who, in common with a deploying parent, is:
- (A) a parent of a child under law of this state other than the act; or
 - (B) an individual who has custodial responsibility for a child under law of this state other than the act;
- (13) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;
- (14) Return from deployment means the conclusion of a service member's deployment as specified in uniformed service orders;
- (15) Service member means a member of a uniformed service;
- (16) Sign means, with present intent to authenticate or adopt a record:
- (A) to execute or adopt a tangible symbol; or
 - (B) to attach to or logically associate with the record an electronic symbol, sound, or process;
- (17) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and
- (18) Uniformed service means:
- (A) active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;
 - (B) the United States Merchant Marine;
 - (C) the commissioned corps of the United States Public Health Service;
 - (D) the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(E) the National Guard of a state.

Source: Laws 2015, LB219, § 2.
Operative date January 1, 2016.

43-4603 Remedies for noncompliance.

In addition to other remedies under the law of this state other than the Uniform Deployed Parents Custody and Visitation Act, if a court finds that a party to a proceeding under the act has acted in bad faith or intentionally failed to comply with the act or a court order issued under the act, the court may assess reasonable attorney's fees and costs against the party and order other appropriate relief.

Source: Laws 2015, LB219, § 3.
Operative date January 1, 2016.

43-4604 Jurisdiction.

(a) A court may issue an order regarding custodial responsibility under the Uniform Deployed Parents Custody and Visitation Act only if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) If a court has issued a temporary order regarding custodial responsibility pursuant to sections 43-4613 to 43-4623, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.

(c) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to sections 43-4608 to 43-4612, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(d) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(e) This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

Source: Laws 2015, LB219, § 4.
Operative date January 1, 2016.

Cross References

Uniform Child Custody Jurisdiction and Enforcement Act, see section 43-1226.

43-4605 Notification required of deploying parent.

(a) Except as otherwise provided in subsection (d) of this section and subject to subsection (c) of this section, a deploying parent shall notify in a record the other parent of a pending deployment not later than seven days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification

within the seven days, the deploying parent shall give the notification as soon as reasonably possible.

(b) Except as otherwise provided in subsection (d) of this section and subject to subsection (c) of this section, each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (a) of this section.

(c) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (a) of this section, or notification of a plan for custodial responsibility during deployment under subsection (b) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notification in a record under subsection (a) or (b) of this section is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

Source: Laws 2015, LB219, § 5.
Operative date January 1, 2016.

43-4606 Duty to notify of change of address.

(a) Except as otherwise provided in subsection (b) of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to sections 43-4608 to 43-4612 or 43-4613 to 43-4623 shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.

(b) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (a) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

Source: Laws 2015, LB219, § 6.
Operative date January 1, 2016.

43-4607 General consideration in custody proceeding of parent's military service.

In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child but may consider any

significant impact on the best interest of the child of the parent's past or possible future deployment.

Source: Laws 2015, LB219, § 7.

Operative date January 1, 2016.

PART 2. AGREEMENT ADDRESSING CUSTODIAL
RESPONSIBILITY DURING DEPLOYMENT

43-4608 Form of agreement.

(a) The parents of a child may enter into a temporary agreement under sections 43-4608 to 43-4612 granting custodial responsibility during deployment.

(b) An agreement under subsection (a) of this section must be:

(1) in writing; and

(2) signed by both parents and any nonparent to whom custodial responsibility is granted.

(c) Subject to subsection (d) of this section, an agreement under subsection (a) of this section, if feasible, must:

(1) identify the destination, duration, and conditions of the deployment that is the basis for the agreement;

(2) specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;

(3) specify any decisionmaking authority that accompanies a grant of caretaking authority;

(4) specify any grant of limited contact to a nonparent;

(5) if under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;

(6) specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;

(7) specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(8) acknowledge that any party's child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(9) provide that the agreement will terminate according to the procedures under sections 43-4624 to 43-4627 after the deploying parent returns from deployment; and

(10) if the agreement must be filed pursuant to section 43-4612, specify which parent is required to file the agreement.

(d) The omission of any of the items specified in subsection (c) of this section does not invalidate an agreement under this section.

Source: Laws 2015, LB219, § 8.

Operative date January 1, 2016.

43-4609 Nature of authority created by agreement.

(a) An agreement under sections 43-4608 to 43-4612 is temporary and terminates pursuant to sections 43-4624 to 43-4627 after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under section 43-4610. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent who has caretaking authority, decisionmaking authority, or limited contact by an agreement under sections 43-4608 to 43-4612 has standing to enforce the agreement until it has been terminated by court order, by modification under section 43-4610, or under sections 43-4624 to 43-4627.

Source: Laws 2015, LB219, § 9.

Operative date January 1, 2016.

43-4610 Modification of agreement.

(a) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to sections 43-4608 to 43-4612.

(b) If an agreement is modified under subsection (a) of this section before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(c) If an agreement is modified under subsection (a) of this section during deployment of a deploying parent, the modification must be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

Source: Laws 2015, LB219, § 10.

Operative date January 1, 2016.

43-4611 Power of attorney.

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than the Uniform Deployed Parents Custody and Visitation Act, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

Source: Laws 2015, LB219, § 11.

Operative date January 1, 2016.

43-4612 Filing agreement or power of attorney with court.

An agreement or power of attorney under sections 43-4608 to 43-4612 must be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support must be provided to the court with the agreement or power.

Source: Laws 2015, LB219, § 12.

Operative date January 1, 2016.

PART 3. JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL
RESPONSIBILITY DURING DEPLOYMENT**43-4613 Close and substantial relationship, defined.**

In sections 43-4613 to 43-4623, close and substantial relationship means a relationship in which a significant bond exists between a child and a nonparent.

Source: Laws 2015, LB219, § 13.
Operative date January 1, 2016.

43-4614 Proceeding for temporary custody order.

(a) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. appendix sections 521 and 522, as the act exists on January 1, 2015. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under section 43-4604 or, if there is no pending proceeding in a court with jurisdiction under section 43-4604, in a new action for granting custodial responsibility during deployment.

Source: Laws 2015, LB219, § 14.
Operative date January 1, 2016.

43-4615 Expedited hearing.

If a motion to grant custodial responsibility is filed under subsection (b) of section 43-4614 before a deploying parent deploys, the court shall conduct an expedited hearing.

Source: Laws 2015, LB219, § 15.
Operative date January 1, 2016.

43-4616 Testimony by electronic means.

In a proceeding under sections 43-4613 to 43-4623, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.

Source: Laws 2015, LB219, § 16.
Operative date January 1, 2016.

43-4617 Effect of prior judicial order or agreement.

In a proceeding for a grant of custodial responsibility pursuant to sections 43-4613 to 43-4623, the following rules apply:

(1) A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of law of this state other than the Uniform Deployed Parents Custody and Visitation Act for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under sections 43-4608 to 43-4612, unless the court finds that the agreement is contrary to the best interest of the child.

Source: Laws 2015, LB219, § 17.
Operative date January 1, 2016.

43-4618 Grant of caretaking or decisionmaking authority to nonparent.

(a) On a motion of a deploying parent and in accordance with the laws of this state, other than the Uniform Deployed Parents Custody and Visitation Act, if it is in the best interests of the child, a court may grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. The court shall consider the following factors as related to the best interests of the child:

- (1) The emotional, physical, and developmental needs of the minor child;
- (2) The minor child's opinion or preference;
- (3) The level of involvement and the extent of predeployment parenting responsibility exercised by the nonparent;
- (4) The quality of the relationship between the minor child and the nonparent;
- (5) The strength of the minor child's ties to the nonparent;
- (6) The extent to which the delegation would interfere or support the minor child's existing school, sports, and extracurricular activities;
- (7) The age, maturity, and living conditions of the nonparent; and
- (8) The likelihood that allowing the delegation would increase or decrease the hostilities between the parties involved.

(b) Unless a grant of caretaking authority to a nonparent under subsection (a) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than:

- (1) the amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or
- (2) in the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.

(c) A court may grant part of a deploying parent's decisionmaking authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decisionmaking powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel.

Source: Laws 2015, LB219, § 18.
Operative date January 1, 2016.

43-4619 Grant of limited contact.

On motion of a deploying parent, and in accordance with the law of this state other than the Uniform Deployed Parents Custody and Visitation Act, unless the court finds that the contact would be contrary to the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.

Source: Laws 2015, LB219, § 19.
Operative date January 1, 2016.

43-4620 Nature of authority created by temporary custody order.

(a) A grant of authority under sections 43-4613 to 43-4623 is temporary and terminates under sections 43-4624 to 43-4627 after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decisionmaking authority, or limited contact in an individual to whom it is granted.

(b) A nonparent granted caretaking authority, decisionmaking authority, or limited contact under sections 43-4613 to 43-4623 has standing to enforce the grant until it is terminated by court order or under sections 43-4624 to 43-4627.

Source: Laws 2015, LB219, § 20.
Operative date January 1, 2016.

43-4621 Content of temporary custody order.

(a) An order granting custodial responsibility under sections 43-4613 to 43-4623 must:

- (1) designate the order as temporary; and
- (2) identify to the extent feasible the destination, duration, and conditions of the deployment.

(b) If applicable, an order for custodial responsibility under sections 43-4613 to 43-4623 must:

- (1) specify the allocation of caretaking authority, decisionmaking authority, or limited contact among the deploying parent, the other parent, and any nonparent;
- (2) if the order divides caretaking or decisionmaking authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;
- (3) provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;
- (4) provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child;
- (5) provide for reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and

(6) provide that the order will terminate pursuant to sections 43-4624 to 43-4627 after the deploying parent returns from deployment.

Source: Laws 2015, LB219, § 21.
Operative date January 1, 2016.

43-4622 Order for child support.

If a court has issued an order granting caretaking authority under sections 43-4613 to 43-4623, or an agreement granting caretaking authority has been executed under sections 43-4608 to 43-4612, the court may enter a temporary order for child support consistent with law of this state other than the Uniform Deployed Parents Custody and Visitation Act if the court has jurisdiction under the Uniform Interstate Family Support Act.

Source: Laws 2015, LB219, § 22.
Operative date January 1, 2016.

Cross References

Uniform Interstate Family Support Act, see section 42-701.

43-4623 Modifying or terminating grant of custodial responsibility to non-parent.

(a) Except for an order under section 43-4617, except as otherwise provided in subsection (b) of this section, and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. appendix sections 521 and 522, as the act exists on January 1, 2015, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decisionmaking authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with sections 43-4613 to 43-4623 and it is in the best interest of the child. A modification is temporary and terminates pursuant to sections 43-4624 to 43-4627 after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

Source: Laws 2015, LB219, § 23.
Operative date January 1, 2016.

PART 4. RETURN FROM DEPLOYMENT

43-4624 Procedure for terminating temporary grant of custodial responsibility established by agreement.

(a) At any time after return from deployment, a temporary agreement granting custodial responsibility under sections 43-4608 to 43-4612 may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) A temporary agreement under sections 43-4608 to 43-4612 granting custodial responsibility terminates:

(1) if an agreement to terminate under subsection (a) of this section specifies a date for termination, on that date; or

(2) if the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(c) In the absence of an agreement under subsection (a) of this section to terminate, a temporary agreement granting custodial responsibility terminates under sections 43-4608 to 43-4612 sixty days after the deploying parent gives notice to the other parent that the deploying parent has returned from deployment.

(d) If a temporary agreement granting custodial responsibility was filed with a court pursuant to section 43-4612, an agreement to terminate the temporary agreement also must be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support must be provided to the court with the agreement to terminate.

Source: Laws 2015, LB219, § 24.
Operative date January 1, 2016.

43-4625 Consent procedure for terminating temporary grant of custodial responsibility established by court order.

At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued under sections 43-4613 to 43-4623. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

Source: Laws 2015, LB219, § 25.
Operative date January 1, 2016.

43-4626 Visitation before termination of temporary grant of custodial responsibility.

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under sections 43-4608 to 43-4612 or 43-4613 to 43-4623 is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

Source: Laws 2015, LB219, § 26.
Operative date January 1, 2016.

43-4627 Termination by operation of law of temporary grant of custodial responsibility established by court order.

(a) If an agreement between the parties to terminate a temporary order for custodial responsibility under sections 43-4613 to 43-4623 has not been filed, the order terminates sixty days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(b) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than the Uniform Deployed Parents Custody and Visitation Act.

Source: Laws 2015, LB219, § 27.
Operative date January 1, 2016.

PART 5. MISCELLANEOUS PROVISIONS

43-4628 Uniformity of application and construction.

In applying and construing the Uniform Deployed Parents Custody and Visitation Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2015, LB219, § 28.
Operative date January 1, 2016.

43-4629 Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Deployed Parents Custody and Visitation Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2015, LB219, § 29.
Operative date January 1, 2016.

43-4630 Savings clause.

The Uniform Deployed Parents Custody and Visitation Act does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before January 1, 2016.

Source: Laws 2015, LB219, § 30.
Operative date January 1, 2016.

CHAPTER 44

INSURANCE

Article.

- 2. Lines of Insurance, Organization of Companies. 44-201.
- 3. General Provisions Relating to Insurance. 44-312, 44-313.
- 4. Insurance Reserves; Policy Provisions. 44-416.06, 44-416.07.
- 10. Fraternal Insurance. 44-1095.
- 19. Title Insurance.
 - (b) Title Insurers Act. 44-1981.
- 39. Education.
 - (a) Continuing Education for Insurance Licensees. 44-3903, 44-3904.
 - (b) Prelicensing Education for Insurance Producers. 44-3909, 44-3910.
- 40. Insurance Producers Licensing Act. 44-4047 to 44-4068.
- 77. Model Act Regarding Use of Credit Information in Personal Insurance. 44-7703.
- 87. Nebraska Exchange Transparency Act. 44-8704.

ARTICLE 2

LINES OF INSURANCE, ORGANIZATION OF COMPANIES

Section

44-201. Insurance; lines; enumerated.

44-201 Insurance; lines; enumerated.

An insurance corporation may be formed for the following purposes or may insure the following lines:

(1) **LIFE INSURANCE.** Insurance upon lives of persons, including endowments and annuities, and every insurance pertaining thereto and disability benefits, except that life insurance shall not include variable life insurance specified in subdivision (2) of this section and variable annuities specified in subdivision (3) of this section;

(2) **VARIABLE LIFE INSURANCE.** Insurance on the lives of individuals, the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such insurance;

(3) **VARIABLE ANNUITIES.** Insurance policies issued on an individual or group basis by which an insurer promises to pay a variable sum of money either in a lump sum or periodically for life or for some other specified period;

(4) **SICKNESS AND ACCIDENT INSURANCE.** Insurance against loss or expense resulting from the sickness of the insured, from bodily injury or death of the insured by accident, or both, and every insurance pertaining thereto;

(5) **PROPERTY INSURANCE.** Insurance against loss or damage, including consequential loss or damage, to real or personal property of every kind and any interest in such property from any and all hazards or causes, except that property insurance shall not include title insurance specified in subdivision (15) of this section and marine insurance specified in subdivision (18) of this section;

(6) CREDIT PROPERTY INSURANCE. Insurance against loss or damage to personal property used as collateral for securing a loan or to personal property purchased pursuant to a credit transaction, but only insofar as it applies to property sold to or pledged by individual consumers for personal use;

(7) GLASS INSURANCE. Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(8) BURGLARY AND THEFT INSURANCE. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing;

(9) BOILER AND MACHINERY INSURANCE. Insurance against any liability and loss or damage to life, person, property, or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

(10) LIABILITY INSURANCE. Insurance against legal liability for the death, injury, or disability of any person, for injury or damage to any person, or for damage to property, and the providing of medical, hospital, surgical, or disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance, except that liability insurance shall not include workers' compensation and employers liability insurance specified in subdivision (11) of this section;

(11) WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE. Insurance against the legal liability of any employer for the death or disablement of or injury to an employee whether imposed by common law or statute or assumed by contract, except that workers' compensation and employers liability insurance shall not include liability insurance specified in subdivision (10) of this section;

(12) VEHICLE INSURANCE. Insurance against any loss or damage to any land vehicle, other than railroad rolling stock, or any draft animal, from any hazard or cause, and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle or animal, together with insurance against accidental injury to or death of any person, irrespective of legal liability of the insured, if such insurance is issued as an incidental part of insurance on the vehicle or draft animal;

(13) FIDELITY INSURANCE. Insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(14) SURETY INSURANCE. Insurance guaranteeing the performance of contracts other than insurance policies or guaranteeing and executing all bonds, undertakings, and contracts of suretyship, except that surety insurance shall not include title insurance specified in subdivision (15) of this section and financial guaranty insurance specified in subdivision (19) of this section;

(15) TITLE INSURANCE. (a) Insurance guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of (i) liens, encumbrances upon, defects in, or the unmarketability of title to such real property, or adverse claim to title in real property with reasonable examination of title guaranteeing, warranting, or otherwise insuring by a title insurer the correctness of searches relating to the title to real property

and (ii) defects in the authorization, execution, or delivery of an encumbrance upon such real property, or any share, participation, or other interest in such encumbrance, guaranteeing, warranting, or otherwise insuring by a title insurer the validity and enforceability of evidences of indebtedness secured by an encumbrance upon or interest in such real property; or

(b) Insurance guaranteeing or indemnifying owners of personal property or secured parties or others interested therein against loss or damage pertaining to adverse claims to title, liens, encumbrances upon, or security interests in personal property or fixtures, including the existence or nonexistence of attachment, perfection, or priority of security interests in personal property or fixtures under the Uniform Commercial Code or other laws, rules, or regulations establishing procedures for the attachment, perfection, or priority of security interests in personal property or fixtures or the accuracy or completeness of the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures or the existence or nonexistence of protected purchaser status under the Uniform Commercial Code;

(16) CREDIT INSURANCE. Insurance against loss or damage from the failure of persons indebted to or to become indebted to the insured to meet existing or contemplated liabilities, including agreements to purchase uncollectible debts, except that credit insurance shall not include mortgage guaranty insurance specified in subdivision (17) of this section and financial guaranty insurance specified in subdivision (19) of this section;

(17) MORTGAGE GUARANTY INSURANCE. Insurance against financial loss by lenders by reason of nonpayment of principal, interest, or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate;

(18) MARINE INSURANCE. Insurance against loss or damage, including consequential loss or damage, to vessels, craft, aircraft, automobiles, and vehicles of every kind as well as goods, freights, cargoes, merchandise, effects, disbursements, profits, money, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry, and respondentia interests, and all kinds of property and interests therein in respect to, pertaining to, or in connection with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas, or waters, on land or in the air, or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment or while awaiting the same, or during any delays, storage, transshipment, or reshipment incidental thereto; including marine builders' risks and war risks; and against loss or damage to persons or property in connection with or appertaining to marine, inland marine, transit, or transportation insurance, including loss or damage to either, arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of such primary insurance, but not including life insurance or surety bonds; but, except as specified in this subdivision, marine insurance shall not include insurance against loss by reason of bodily injury to the person;

(19) FINANCIAL GUARANTY INSURANCE. (1) Insurance issued in the form of a surety bond, insurance policy, or, when issued by an insurer, an indemnity contract and any guaranty similar to the foregoing types, against financial loss

to an insured claimant, obligee, or indemnitee as a result of any of the following events:

(a) Failure of any obligor on any debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to pay when due principal, interest, premium, dividend, or purchase price of or on such instrument or obligation, when such failure is the result of a financial default or insolvency, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

(b) Changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products;

(c) Changes in the rate of exchange of currency;

(d) Inconvertibility of one currency into another for any reason or inability to withdraw funds held in a foreign country resulting from restrictions imposed by a governmental authority;

(e) Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or

(f) Other events which the Director of Insurance determines are substantially similar to any of the events described in subdivisions (a) through (e) of this subdivision.

(2) Financial guaranty insurance shall not include:

(a) Insurance of any loss resulting from any event described in subdivisions (19)(1)(a) through (e) of this section if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

(i) A fortuitous physical event;

(ii) A failure of or deficiency in the operation of equipment; or

(iii) An inability to extract or recover a natural resource;

(b) Any individual or schedule public official bond;

(c) Any contract bond, including bid, payment, or maintenance bond, or a performance bond when the bond is guarantying the execution of any contract other than a contract of indebtedness or other monetary obligation;

(d) Any court bond required in connection with judicial, probate, bankruptcy, or equity proceedings, including waiver, probate, open estate, and life tenant bond;

(e) Any bond running to the federal, state, county, or municipal government or other political subdivision as a condition precedent to granting of a license to engage in a particular business or of a permit to exercise a particular privilege;

(f) Any loss security bond or utility payment indemnity bond running to a governmental unit, railroad, or charitable organization;

(g) Any lease, purchase, and sale or concessionaire surety bond;

(h) Credit unemployment insurance, meaning insurance on a debtor, in connection with a specific loan or other credit transaction, to provide payments to creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed;

(i) Credit insurance, meaning insurance indemnifying manufacturers, merchants, or educational institutions extending credit against loss or damage resulting from nonpayment of debts owed to them for goods or services provided in the normal course of their business;

(j) Guaranteed investment contracts issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions;

(k) Funding agreements;

(l) Synthetic guaranteed investment contracts;

(m) Guaranteed interest contracts;

(n) Deposit administration contracts;

(o) Surety insurance as specified in subdivision (14) of this section and mortgage guaranty insurance as specified in subdivision (17) of this section;

(p) Indemnity contracts or similar guaranties to the extent that they are not otherwise limited or proscribed by Chapter 44 in which a life insurer:

(i) Guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary of which it owns more than fifty percent, other than a financial guaranty insurance corporation, except that:

(A) To the extent that any such obligations or indebtedness are backed by specific assets, such assets shall at all times be owned by the insurer or the subsidiary; and

(B) In the case of the guaranty of the obligations or indebtedness of the subsidiary that is not backed by specific assets of the life insurer, such guaranty terminates once the subsidiary ceases to be a subsidiary; or

(ii) Guaranties obligations or indebtedness, including the obligation to substitute assets where appropriate, with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guaranties obligations or indebtedness acquired by its subsidiary if such assets have been:

(A) Acquired by a special purpose entity, the sole purpose of which is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by such assets; or

(B) Sold to an independent third party; or

(iii) Guaranties obligations or indebtedness of an employee or agent of the life insurer; and

(q) Any other form of insurance covering risks which the director determines to be substantially similar to any of the risks described in subdivisions (a) through (p) of this subdivision; and

(20) MISCELLANEOUS INSURANCE. Insurance upon any risk, including but not limited to legal expense insurance and mechanical breakdown insurance, not included within subdivisions (1) through (19) of this section, and which is a proper subject for insurance, not prohibited by law or contrary to sound public policy, to be determined by the Department of Insurance.

Source: Laws 1913, c. 154, § 78, p. 426; R.S.1913, § 3215; Laws 1917, c. 77, § 1, p. 183; Laws 1919, c. 190, tit. V, art. V, § 1, p. 606; C.S.1922, § 7814; Laws 1925, c. 124, § 1, p. 326; Laws 1927, c. 136, § 1, p. 374; C.S.1929, § 44-401; Laws 1935, c. 96, § 1, p.

319; C.S.Supp.,1941, § 44-401; R.S.1943, § 44-201; Laws 1949, c. 138, § 1, p. 358; Laws 1965, c. 253, § 1, p. 712; Laws 1967, c. 261, § 18, p. 693; Laws 1967, c. 262, § 1, p. 699; Laws 1971, LB 767, § 1; Laws 1973, LB 234, § 1; Laws 1978, LB 767, § 1; Laws 1989, LB 92, § 41; Laws 1991, LB 235, § 2; Laws 2004, LB 1047, § 2; Laws 2015, LB180, § 1.
Effective date August 30, 2015.

ARTICLE 3

GENERAL PROVISIONS RELATING TO INSURANCE

Section

- 44-312. Telehealth and telemonitoring services covered under policy, certificate, contract, or plan; insurer; duties.
44-313. Insurer; contract for pharmacist professional services; authorized.

44-312 Telehealth and telemonitoring services covered under policy, certificate, contract, or plan; insurer; duties.

(1) For purposes of this section:

(a) Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care provider in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a health care provider at another site for medical evaluation, and telemonitoring; and

(b) Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a health care provider for analysis and storage.

(2) Any insurer offering (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state, (b) any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, or (c) any self-funded employee benefit plan to the extent not preempted by federal law, shall provide upon request to a policyholder, certificate holder, or health care provider a description of the telehealth and telemonitoring services covered under the relevant policy, certificate, contract, or plan.

(3) The description shall include:

(a) A description of services included in telehealth and telemonitoring coverage, including, but not limited to, any coverage for transmission costs;

(b) Exclusions or limitations for telehealth and telemonitoring coverage, including, but not limited to, any limitation on coverage for transmission costs;

(c) Requirements for the licensing status of health care providers providing telehealth and telemonitoring services; and

(d) Requirements for demonstrating compliance with the signed written statement requirement in section 71-8505.

Source: Laws 2015, LB257, § 1.

Effective date August 30, 2015.

44-313 Insurer; contract for pharmacist professional services; authorized.

(1) For purposes of this section:

(a) Insurer means any insurer offering any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and any self-funded employee benefit plan to the extent not preempted by federal law; and

(b) Pharmacist professional services means professional services provided to patients by licensed pharmacists as allowed by law.

(2) On and after January 1, 2016, an insurer may contract with a licensed pharmacist for pharmacist professional services. Nothing in this section shall prohibit an insurer from contracting with a licensed pharmacist who is not employed or associated with a pharmacy. Nothing in this section shall require a licensed pharmacist to contract with an insurer for pharmacist professional services.

Source: Laws 2015, LB342, § 1.

Effective date August 30, 2015.

ARTICLE 4**INSURANCE RESERVES; POLICY PROVISIONS**

Section

44-416.06. Credit for reinsurance; when allowed; suspension or revocation of accreditation or certification; director; powers; notice; hearing; insurer duties.

44-416.07. Asset or reduction from liability for reinsurance; limitations; security required.

44-416.06 Credit for reinsurance; when allowed; suspension or revocation of accreditation or certification; director; powers; notice; hearing; insurer duties.

(1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), (6), or (7) of this section. Except as otherwise provided in section 44-224.11, credit shall be allowed under subsection (2), (3), or (4) of this section only for cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection (4) or (5) of this section only if the applicable requirements of subsection (8) of this section have been satisfied.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance in this state.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the Director of Insurance as a reinsurer in this state. In order to be eligible for accreditation, a reinsurer must:

(a) File with the director evidence of its submission to this state's jurisdiction;

(b) Submit to this state's authority to examine its books and records;

(c) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;

(d) File annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(e) Demonstrate to the satisfaction of the director that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than twenty million dollars and its accreditation has not been denied by the director within ninety days after submission of its application.

(4)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:

(i) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

(ii) Submits to the authority of this state to examine its books and records.

(b) The requirement of subdivision (4)(a)(i) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the director and bear the expense of examination.

(b)(i) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(A) The commissioner of the state where the trust is domiciled; or

(B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(ii) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.

(iii) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(c) The following requirements apply to the following categories of assuming insurer:

(i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars except as provided in subdivision (5)(c)(ii) of this section;

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust; and

(iii)(A) In the case of a group including incorporated and individual unincorporated underwriters:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of sections 44-416.05 to 44-416.10, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain in trust a trustee surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account;

(B) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and

(C) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(6)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the director as a reinsurer in this state and secures its obligations in accordance with the requirements of this subsection.

(b) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(i) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director pursuant to subdivision (6)(d) of this section;

(ii) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the director pursuant to rules and regulations;

(iii) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the director pursuant to rules and regulations;

(iv) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the director as its agent for service of process in this state, and agree to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(v) The assuming insurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis; and

(vi) The assuming insurer must satisfy any other requirements for certification deemed relevant by the director.

(c) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of subdivision (6)(b) of this section:

(i) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the director to provide adequate protection;

(ii) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(iii) Within ninety days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the director an annual certification by the association's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(d)(i) The director shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the director as a certified reinsurer.

(ii) In order to determine whether the domiciliary jurisdiction of a non-United-States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United-States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the director has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the director.

(iii) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners committee process. The director shall consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification in accordance with criteria to be developed under rules and regulations.

(iv) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

(v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the director has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(e) The director shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the director pursuant to rules and regulations. The director shall publish a list of all certified reinsurers and their ratings.

(f)(i) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in rules and regulations adopted and promulgated by the director.

(ii) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the director and consistent with the provisions of section 44-416.07 or in a multibeneficiary trust in accordance with subsection (5) of this section, except as otherwise provided in this subsection.

(iii) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection (5) of this section and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to subsection (5) of this section. It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall have bound itself, by the language

of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

(iv) The minimum trusted surplus requirements provided in subsection (5) of this section are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trusted surplus of ten million dollars.

(v) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the director shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(vi)(A) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent of its obligations.

(B) As used in subdivision (6)(f)(vi)(A) of this section, the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.

(C) If the director continues to assign a higher rating as permitted by other provisions of this section, the requirement in subdivision (6)(f)(vi)(A) of this section does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(g) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners-accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.

(h) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the director shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(7) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (2), (3), (4), (5), or (6) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(8) If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a)(i) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by

the final decision of the court or of any appellate court in the event of an appeal; and

(ii) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(b) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(9) If the assuming insurer does not meet the requirements of subsection (2), (3), or (4) of this section, the credit permitted by subsection (5) or (6) of this section shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subdivision (5)(c) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the state insurance commissioner with regulatory oversight all of the assets of the trust fund;

(b) The assets shall be distributed by and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) If the state insurance commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the state insurance commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(10)(a) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the director may suspend or revoke the reinsurer's accreditation or certification.

(b) The director must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the director's order on hearing unless:

(i) The reinsurer waives its right to hearing;

(ii) The director's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subdivision (6)(g) of this section; or

(iii) The director finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the director's action.

(c) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with section 44-416.07. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subdivision (6)(f) of this section or section 44-416.07.

(11)(a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the director within thirty days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the director within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Source: Laws 2005, LB 119, § 31; Laws 2015, LB298, § 1.
Effective date August 30, 2015.

44-416.07 Asset or reduction from liability for reinsurance; limitations; security required.

An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 44-416.06 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(1) Cash;

(2) Securities approved by the Director of Insurance. The director may use the list of securities furnished by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(3)(a) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution effective no later than December 31 of the year for which the filing is being made, and in the possession of,

or in trust for, the ceding insurer on or before the filing date of its annual statement; or

(b) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the director.

Source: Laws 2005, LB 119, § 32; Laws 2015, LB298, § 2.
Effective date August 30, 2015.

ARTICLE 10 FRATERNAL INSURANCE

Section
44-1095. Funds and property; exempt from taxation.

44-1095 Funds and property; exempt from taxation.

Every society organized or licensed under sections 44-1072 to 44-10,109 shall be a charitable and benevolent institution, and all of its funds and property shall be exempt from all and every state, county, district, municipal, and school tax.

Source: Laws 1985, LB 508, § 24; Laws 2015, LB414, § 1.
Operative date January 1, 2016.

ARTICLE 19 TITLE INSURANCE

(b) TITLE INSURERS ACT

Section
44-1981. Terms, defined.

(b) TITLE INSURERS ACT

44-1981 Terms, defined.

For purposes of the Title Insurers Act:

(1) Abstract of title means a compilation in orderly arrangement of the materials and facts of record affecting the title to a specific piece of land, issued under a certificate certifying to the matters contained in such compilation;

(2) Affiliate means a specific person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified;

(3) Bona fide employee of the title insurer means an individual who devotes substantially all of his or her time to performing services on behalf of a title insurer and whose compensation for the services is in the form of salary or its equivalent paid by the title insurer;

(4) Control, including the terms controlling, controlled by, and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a

commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office held by the person. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(5) Direct operations means that portion of a title insurer's operations which are attributable to title insurance business written by a bona fide employee of the title insurer;

(6) Director means the Director of Insurance;

(7) Escrow means written instruments, money, or other items deposited by one party with a depository, escrow agent, or escrow for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(8) Escrow, settlement, or closing fee means the consideration for supervising or handling the actual execution, delivery, or recording of transfer and lien documents and for disbursing funds;

(9) Foreign title insurer means any title insurer incorporated or organized under the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States;

(10) Net retained liability means the total liability retained by a title insurer for a single risk, after taking into account any ceded liability and collateral, acceptable to the director, maintained by the title insurer;

(11) Non-United-States title insurer means any title insurer incorporated or organized under the laws of any foreign nation or any foreign province or territory;

(12) Person means any natural person, partnership, association, cooperative, corporation, trust, or other legal entity;

(13) Producer of title insurance business has the same meaning as in section 44-19,108;

(14) Qualified financial institution means an institution that is:

(a) Organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state and has been granted authority to operate with fiduciary powers;

(b) Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies;

(c) Insured by the appropriate federal entity; and

(d) Qualified under any additional rules and regulations adopted and promulgated by the director;

(15) Referral has the same meaning as in section 44-19,108;

(16) Security or security deposit means funds or other property received by a title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement pursuant to which the title insurer is granted a perfected

security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage;

(17) Title insurance agent has the same meaning as in section 44-19,108;

(18) Title insurance business or business of title insurance means:

(a) Issuing as a title insurer or offering to issue as a title insurer a title insurance policy;

(b) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) Soliciting or negotiating the issuance of a title insurance policy;

(ii) Guaranteeing, warranting, or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units, and proprietary leases and for all liens or charges affecting the same;

(iii) Handling of escrows, settlements, or closings;

(iv) Executing title insurance policies;

(v) Effecting contracts of reinsurance;

(vi) Searching or examining titles; or

(vii) Guaranteeing, warranting, or otherwise insuring the correctness of the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures;

(c) Guaranteeing, warranting, or insuring searches or examinations of title to real property or any interest in real property;

(d) Guaranteeing or warranting the status of title as to ownership of or liens on real property by any person other than the principals to the transaction;

(e) Transacting or proposing to transact any business substantially equivalent to any of the activities listed in this subdivision in a manner designed to evade the provisions of the Title Insurers Act;

(f) Guaranteeing, warranting, or insuring the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures; or

(g) Guaranteeing or warranting adverse claims to title, liens, encumbrances upon, or security interests in personal property or fixtures by any person other than the principals to the transaction;

(19) Title insurance commitment means a preliminary commitment, report, or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions, and any other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy;

(20) Title insurance policy means:

(a) A contract insuring or indemnifying owners of, or other persons lawfully interested in, real property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:

(i) Defects in or liens or encumbrances on the insured title;

(ii) Unmarketability of the insured title;

(iii) Invalidity, lack of priority, or unenforceability of liens or encumbrances on the stated property;

(iv) Lack of legal right of access to the land; or

(v) Unenforceability of rights in title to the land; or

(b) A contract insuring or indemnifying owners of personal property or secured parties or others interested therein against loss or damage pertaining to adverse claims to title, liens, encumbrances upon, or security interests in personal property or fixtures, including the existence or nonexistence of the attachment, perfection, or priority of security interests in personal property or fixtures under the Uniform Commercial Code or other laws, rules, or regulations establishing procedures for the attachment, perfection, or priority of security interests in personal property or fixtures, or the accuracy or completeness of the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures, and arising from any or all of the following conditions not excepted or excluded:

(i) Other liens or encumbrances on the stated personal property or fixtures;

(ii) Invalidity, lack of priority, or unenforceability of liens or other security interests in the stated personal property or fixtures; or

(iii) Any other matters relating directly or indirectly to the lien status of the stated personal property or fixtures;

(21) Title insurer means any insurer organized under the laws of this state for the purpose of transacting the business of title insurance and any foreign or non-United-States title insurer authorized to transact the business of title insurance in this state; and

(22) Title plant means a set of records consisting of documents, maps, surveys, or entries affecting title to real property or any interest in or encumbrance on the property which have been filed or recorded in the jurisdiction for which the title plant is established or maintained.

Source: Laws 1997, LB 53, § 4; Laws 2001, LB 360, § 9; Laws 2015, LB180, § 2.

Effective date August 30, 2015.

ARTICLE 39

EDUCATION

(a) CONTINUING EDUCATION FOR INSURANCE LICENSEES

Section

44-3903. Continuing education requirements; exceptions.

44-3904. Licensee; requirements; furnish evidence of continuing education.

(b) PRELICENSING EDUCATION FOR INSURANCE PRODUCERS

44-3909. Prelicensing education requirements.

44-3910. Prelicensing education requirements; exemptions.

(a) CONTINUING EDUCATION FOR INSURANCE LICENSEES

44-3903 Continuing education requirements; exceptions.

Sections 44-3901 to 44-3908 shall not apply to the following persons:

(1) Licensees for whom an examination is not required under the laws of this state;

- (2) Licensees who sell or consult only in the areas of credit life insurance and credit accident and health insurance;
- (3) Licensees who sell or consult only in the area of travel insurance; and
- (4) Licensees holding such limited or restricted licenses as the director may exempt.

Source: Laws 1982, LB 274, § 3; Laws 1985, LB 48, § 1; Laws 1989, LB 92, § 243; Laws 1990, LB 984, § 1; Laws 2001, LB 51, § 34; Laws 2015, LB458, § 1.
Effective date August 30, 2015.

44-3904 Licensee; requirements; furnish evidence of continuing education.

(1)(a)(i) Licensees qualified to solicit property and casualty insurance shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing before January 1, 2010. Licensees qualified to solicit life, accident and health or sickness, property, casualty, or personal lines property and casualty insurance shall be required to complete six hours of approved continuing education activities for each line of insurance, including each miscellaneous line, in which he or she is licensed in each two-year period commencing before January 1, 2010. Licensees qualified to solicit life, accident and health or sickness, property, casualty, or personal lines property and casualty insurance shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2010.

(ii) Licensees qualified to solicit only crop insurance shall be required to complete three hours of approved continuing education activities in each two-year period.

(iii) Licensees qualified to solicit only limited line pre-need funeral insurance shall be required to complete (A) three hours of approved continuing education activities in each two-year period if such licensee holds a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice Act or (B) six hours of approved continuing education activities in each two-year period if such licensee does not hold a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice Act.

(iv) Licensees qualified to solicit any lines of insurance other than those described in subdivisions (i), (ii), and (iii) of subdivision (a) of this subsection shall be required to complete six hours of approved continuing education activities in each two-year period for each line of insurance, including each miscellaneous line, in which he or she is licensed. Licensees qualified to solicit variable life and variable annuity products shall not be required to complete additional continuing education activities because the licensee is qualified to solicit variable life and variable annuity products.

(b) Licensees who are not insurance producers shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2000.

(c) In each two-year period, every licensee shall furnish evidence to the director that he or she has satisfactorily completed the hours of approved continuing education activities required under this subsection for each line of insurance in which he or she is licensed as a resident insurance producer, except that no licensee shall be required to complete more than twenty-four

cumulative hours required under this subsection in any two-year period commencing on or after January 1, 2000.

(d) A licensee shall not repeat a continuing education activity for credit within a two-year period.

(2) In each two-year period, licensees required to complete approved continuing education activities under subsection (1) of this section shall, in addition to such activities, be required to complete three hours of approved continuing education activities on insurance industry ethics.

(3) When the requirements of this section have been met, the licensee shall furnish to the department evidence of completion for the current two-year period.

Source: Laws 1982, LB 274, § 4; Laws 1985, LB 48, § 2; Laws 1988, LB 1114, § 1; Laws 1989, LB 92, § 244; Laws 1989, LB 279, § 4; Laws 1993, LB 583, § 91; Laws 1994, LB 978, § 29; Laws 1999, LB 260, § 5; Laws 2008, LB855, § 23; Laws 2015, LB198, § 1. Effective date August 30, 2015.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

(b) PRELICENSING EDUCATION FOR INSURANCE PRODUCERS

44-3909 Prelicensing education requirements.

Except as otherwise provided by the Insurance Producers Licensing Act, no individual shall be eligible to apply for a license as an insurance producer unless he or she has completed the following prelicensing education requirements:

(1) An individual seeking a qualification for a license in the life insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of life insurance;

(2) An individual seeking a qualification for a license in the accident and health or sickness insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of accident and health or sickness insurance;

(3) An individual seeking a qualification for a license in the property insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of property insurance;

(4) An individual seeking a qualification for a license in the casualty insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of casualty insurance;

(5) An individual seeking a qualification for a license in the personal lines property and casualty insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of personal lines property and casualty insurance;

(6) An individual seeking a qualification for a license in the title insurance line shall complete at least six hours of education on insurance industry ethics in addition to six hours of education in the area of title insurance;

(7) An individual seeking a qualification for a license in the crop insurance line shall complete at least three hours of education on insurance industry ethics in addition to three hours of education in the area of crop insurance; and

(8) An individual seeking a qualification for a license to sell limited line pre-need funeral insurance shall complete at least three hours of education on insurance industry ethics in addition to (a) three hours of education in the area of life insurance if such individual holds a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice Act or (b) five hours of education in the area of life insurance if such individual does not hold a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice Act.

Source: Laws 1993, LB 583, § 95; Laws 1999, LB 260, § 7; R.S.1943, (1998), § 44-4005.01; Laws 2001, LB 51, § 29; Laws 2008, LB855, § 24; Laws 2015, LB198, § 2.
Effective date August 30, 2015.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

Insurance Producers Licensing Act, see section 44-4047.

44-3910 Prelicensing education requirements; exemptions.

The prelicensing education requirements of section 44-3909 shall not apply to an individual who, at the time of application for an insurance producer license:

(1) Is applying for qualification for the life insurance line of authority and has the certified employee benefit specialist designation, the chartered financial consultant designation, the certified insurance counselor designation, the certified financial planner designation, the chartered life underwriter designation, the fellow life management institute designation, or the Life Underwriter Training Council fellow designation;

(2) Is applying for qualification for the accident and health or sickness insurance line of authority and has the registered health underwriter designation, the certified employee benefit specialist designation, the registered employee benefit consultant designation, or the health insurance associate designation;

(3) Is applying for qualification for the property insurance, casualty insurance, or personal lines property and casualty insurance line of authority and has the accredited advisor in insurance designation, the associate in risk management designation, the certified insurance counselor designation, or the chartered property and casualty underwriter designation;

(4) Is applying for a limited lines travel insurance producer license pursuant to section 44-4068;

(5) Has a college degree with a concentration in insurance from an accredited educational institution;

(6) Is an individual described in section 44-4056 or 44-4058; or

(7) Is a person who the director may exempt pursuant to a rule or regulation adopted and promulgated pursuant to the Administrative Procedure Act.

Source: Laws 1993, LB 583, § 96; R.S.1943, (1998), § 44-4005.02; Laws 2001, LB 51, § 30; Laws 2008, LB855, § 25; Laws 2015, LB458, § 2.
Effective date August 30, 2015.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 40

INSURANCE PRODUCERS LICENSING ACT

Section

- 44-4047. Act, how cited.
- 44-4049. Terms, defined.
- 44-4052. Licensure examination; requirements.
- 44-4054. License; lines of authority; renewal; procedure; licensee; duties; director; powers.
- 44-4055. Nonresident license; requirements.
- 44-4068. Travel insurance; limited lines travel insurance producer; license; duties; travel retailer; duties; director; powers.

44-4047 Act, how cited.

Sections 44-4047 to 44-4068 shall be known and may be cited as the Insurance Producers Licensing Act.

Source: Laws 1984, LB 801, § 1; Laws 1991, LB 419, § 2; Laws 1993, LB 583, § 93; Laws 1999, LB 424, § 2; R.S.Supp.,2000, § 44-4001; Laws 2001, LB 51, § 1; Laws 2015, LB458, § 3.
Effective date August 30, 2015.

44-4049 Terms, defined.

For purposes of the Insurance Producers Licensing Act:

- (1) Business entity means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;
- (2) Director means the Director of Insurance;
- (3) Home state means the state in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer;
- (4) Insurance has the same meaning as in section 44-102;
- (5) Insurance producer or producer has the same meaning as in section 44-103;
- (6) Insurer has the same meaning as in section 44-103;
- (7) License means a document issued by the director authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurer;
- (8) Limited line credit insurance includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the director determines should be designated a form of limited line credit insurance;
- (9) Limited line credit insurance producer means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy;

(10) Limited line pre-need funeral insurance means life insurance or a fixed annuity contract purchased by or on behalf of the insured solely to pay the costs of funeral services or funeral service merchandise to be purchased from a funeral home establishment or cemetery;

(11) Limited line pre-need funeral insurance producer means a person who sells, solicits, or negotiates limited line pre-need funeral insurance coverage to individuals;

(12) Limited lines insurance means any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to subsection (1) of section 44-4054 or any line of insurance that the director may deem it necessary to recognize for the purposes of complying with subsection (5) of section 44-4055;

(13) Limited lines producer means a person authorized by the director to sell, solicit, or negotiate limited lines insurance;

(14) Negotiate means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

(15) Person means any individual or business entity;

(16) Sell means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company;

(17) Solicit means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company;

(18) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(19) Terminate means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance;

(20) Uniform application means the uniform application as prescribed by the director which conforms substantially to the uniform application for resident and nonresident producer licensing adopted by the National Association of Insurance Commissioners; and

(21) Uniform business entity application means the uniform business entity application as prescribed by the director which conforms substantially to the uniform business entity application for resident and nonresident business entities adopted by the National Association of Insurance Commissioners.

Source: Laws 2001, LB 51, § 3; Laws 2015, LB198, § 3.

Effective date August 30, 2015.

44-4052 Licensure examination; requirements.

(1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 44-4056 or 44-4068. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws, rules, and regulations of this state. Examinations required by this section shall be developed and

conducted under rules and regulations adopted and promulgated by the director.

(2) The director may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the non-refundable fee set forth in section 44-4064.

(3) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the director as set forth in section 44-4064.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Source: Laws 2001, LB 51, § 6; Laws 2015, LB458, § 4.
Effective date August 30, 2015.

44-4054 License; lines of authority; renewal; procedure; licensee; duties; director; powers.

(1) Unless denied licensure pursuant to section 44-4059, a person who has met the requirements of sections 44-4052 and 44-4053 shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(a) Life insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) Accident and health or sickness, insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(c) Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) Casualty insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) Variable life and variable annuity products, insurance coverage provided under variable life insurance contracts, and variable annuities;

(f) Limited line credit insurance;

(g) Limited line pre-need funeral insurance;

(h) Personal lines property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and

(i) Any other line of insurance permitted under Nebraska laws, rules, or regulations.

(2) An insurance producer license shall remain in effect unless revoked or suspended if the fee set forth in section 44-4064 is paid and education requirements for resident individual producers are met by the due date.

(3) All business entity licenses issued under the Insurance Producers Licensing Act shall expire on April 30 of each year, and all producers licenses shall expire on the last day of the month of the producer's birthday in the first year after issuance in which his or her age is divisible by two. Such producer licenses may be renewed within the ninety-day period before their expiration dates. Business entity and producer licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director pursuant to section 44-4064 in addition to the

applicable fee otherwise required for renewal of business entity and producer licenses as established by the director pursuant to such section. All business entity and producer licenses renewed within the thirty-day period after their expiration dates pursuant to this subsection shall be deemed to have been renewed before their expiration dates.

(4) The director may establish procedures for renewal of licenses by rule and regulation adopted and promulgated pursuant to the Administrative Procedure Act.

(5) An individual insurance producer who allows his or her license to lapse may, within twelve months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. Producer licenses reinstated pursuant to this subsection shall be issued only after payment of a reinstatement fee as established by the director pursuant to section 44-4064 in addition to the applicable fee otherwise required for renewal of producer licenses as established by the director pursuant to such section.

(6) The director may grant a licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, including, but not limited to, a long-term medical disability, a waiver of those procedures. The director may grant a producer a waiver of any examination requirement or any other fine, fee, or sanction imposed for failure to comply with renewal procedures.

(7) The license shall contain the licensee's name, address, and personal identification number, the date of issuance, the lines of authority, the expiration date, and any other information the director deems necessary.

(8) Licensees shall inform the director by any means acceptable to the director of a change of legal name or address within thirty days after the change. Any person failing to provide such notification shall be subject to a fine by the director of not more than five hundred dollars per violation, suspension of the person's license until the change of address is reported to the director, or both.

(9) The director may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliates or subsidiaries that the National Association of Insurance Commissioners oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the director may deem appropriate.

Source: Laws 2001, LB 51, § 8; Laws 2015, LB198, § 4.
Effective date August 30, 2015.

Cross References

Administrative Procedure Act, see section 84-920.

44-4055 Nonresident license; requirements.

(1) Unless denied licensure pursuant to section 44-4059, a nonresident person shall receive a nonresident insurance producer license if:

(a) The person is currently licensed as a resident and in good standing in his or her home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by section 44-4064;

(c) The person has submitted or transmitted to the director the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed uniform application; and

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

(2) The director may verify the insurance producer's licensing status through the producer data base maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(3) A nonresident insurance producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required for the filing of the change of address.

(4) Notwithstanding any other provision of the Insurance Producers Licensing Act, a person licensed as a surplus lines insurance producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of the Surplus Lines Insurance Act.

(5) Notwithstanding any other provisions of the Insurance Producers Licensing Act, a person licensed as a limited line credit insurance producer, a limited line pre-need funeral insurance producer, or other type of limited lines producer in his or her home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state.

Source: Laws 2001, LB 51, § 9; Laws 2015, LB198, § 5.
Effective date August 30, 2015.

Cross References

Surplus Lines Insurance Act, see section 44-5501.

44-4068 Travel insurance; limited lines travel insurance producer; license; duties; travel retailer; duties; director; powers.

(1) For purposes of this section:

(a) Limited lines travel insurance producer means a licensed insurance producer, including a limited lines producer, who is designated by an insurer as the travel insurance supervising entity;

(b) Offer and disseminate means to provide general information about travel insurance, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other nonlicensable activities permitted by the state;

(c) Travel insurance means insurance coverage for personal risks incident to planned travel, including interruption or cancellation of a trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel. Travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting six months or longer, including those working overseas as an expatriate or as deployed military personnel; and

(d) Travel retailer means a business entity that makes, arranges, or offers travel services and that offers and disseminates travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

(2)(a) The director may issue a limited lines travel insurance producer license to an individual or business entity that authorizes the limited lines travel insurance producer to sell, solicit, or negotiate travel insurance through a licensed insurer in a form and manner prescribed by the director.

(b) A travel retailer, its employees, and its authorized representatives may offer and disseminate travel insurance as a service to the travel retailer's customers, on behalf of and under the direction of an individual or a business entity that holds a limited lines travel insurance producer license. In doing so, the travel retailer must provide to prospective purchasers of travel insurance:

(i) A description of the material terms or the actual material terms of the insurance coverage;

(ii) A description of the process for filing a claim;

(iii) A description of the review or cancellation process for the travel insurance policy; and

(iv) The identity and contact information of the insurer and limited lines travel insurance producer.

(c) At the time of licensure, the limited lines travel insurance producer shall establish and maintain a register of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf on a form prescribed by the director. The limited lines travel insurance producer must maintain and update the register annually and include: The name, address, and contact information of each travel retailer; the name, address, and contact information of an officer or person who directs or controls the travel retailer's operations; and the travel retailer's federal tax identification number. The limited lines travel insurance producer must submit the register to the director upon request. The limited lines travel insurance producer must also certify that the travel retailer registered is not in violation of 18 U.S.C. 1033.

(d) The limited lines travel insurance producer must designate one of its employees who is a licensed individual producer as the person responsible for the limited lines travel insurance producer's compliance with the travel insurance laws, rules, and regulations of the state.

(e) The limited lines travel insurance producer shall require each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which may be subject to review by the director. The training material must include, at minimum, instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

(3) A limited lines travel insurance producer and those registered under its license are exempt from the examination requirements in section 44-4052, the prelicensing education requirements in sections 44-3909 to 44-3913, and the continuing education requirements in sections 44-3901 to 44-3908.

(4) Any travel retailer offering or disseminating travel insurance shall make brochures or other written materials available to prospective purchasers that:

(a) Provide the identity and contact information of the insurer and the limited lines travel insurance producer;

(b) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(c) Explain that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

(5) A travel retailer's employee or authorized representative who is not licensed as an insurance producer may not:

(a) Evaluate or interpret the technical terms, benefits, or conditions of the offered travel insurance coverage;

(b) Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(c) Hold himself or herself out as a licensed insurer, licensed producer, or insurance expert.

(6) A travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions stated in this section is authorized to receive related compensation for the services upon registration by the limited lines travel insurance producer.

(7) Travel insurance may be provided under an individual policy or under a group or master policy.

(8) The limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure that the travel retailer complies with this section.

(9) The director may take disciplinary action against a limited lines travel insurance producer pursuant to section 44-4059.

Source: Laws 2015, LB458, § 5.

Effective date August 30, 2015.

ARTICLE 77

MODEL ACT REGARDING USE OF CREDIT INFORMATION IN PERSONAL INSURANCE

Section
44-7703. Act; applicability.

44-7703 Act; applicability.

The Model Act Regarding Use of Credit Information in Personal Insurance applies to personal insurance and not to commercial insurance. For purposes of the act, personal insurance means private passenger automobile, homeowners, motorcycle, autocycle, mobile homeowners, noncommercial dwelling fire, and boat, personal watercraft, snowmobile, and recreational vehicle insurance policies. Such policies must be individually underwritten for personal, family, or household use. No other type of insurance shall be included as personal insurance for purposes of the act.

Source: Laws 2003, LB 487, § 3; Laws 2015, LB231, § 1.

Effective date August 30, 2015.

ARTICLE 87

NEBRASKA EXCHANGE TRANSPARENCY ACT

Section

44-8704. Nebraska Exchange Stakeholder Commission; officers; meetings; quorum; expenses.

44-8704 Nebraska Exchange Stakeholder Commission; officers; meetings; quorum; expenses.

(1) The Nebraska Exchange Stakeholder Commission shall organize by selecting a chairperson and a vice-chairperson who shall hold office at the pleasure of the commission. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position.

(2) The commission shall hold at least three meetings annually, at times and places fixed by the chairperson.

(3) A majority of the members of the commission shall constitute a quorum.

(4) Members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2013, LB384, § 4; Laws 2015, LB456, § 1.
Effective date May 27, 2015.
Termination date July 1, 2017.



CHAPTER 45

INTEREST, LOANS, AND DEBT

Article.

7. Residential Mortgage Licensing. 45-706, 45-737.

ARTICLE 7

RESIDENTIAL MORTGAGE LICENSING

Section

45-706. License; issuance; denial; abandonment; appeal; renewal; fees; inactive status; renewal; reactivation of license; notice of cancellation.

45-737. Mortgage banker; licensee; duties.

45-706 License; issuance; denial; abandonment; appeal; renewal; fees; inactive status; renewal; reactivation of license; notice of cancellation.

(1) Upon the filing of an application for a license as a mortgage banker, if the director finds that the character and general fitness of the applicant, the members thereof if the applicant is a partnership, limited liability company, association, or other organization, and the officers, directors, and principal employees if the applicant is a corporation are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Residential Mortgage Licensing Act, the director shall issue a license as a mortgage banker to the applicant. The director shall approve or deny an application for a license within ninety days after (a) acceptance of the application, (b) delivery of the bond required under section 45-724, and (c) payment of the required fee.

(2) If the director determines that the mortgage banker license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a mortgage banker license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a mortgage banker license application pursuant to the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act. The director may deny an application for a mortgage banker license application if (a) he or she determines that the applicant does not meet the conditions of subsection (1) of this section or (b) an officer, director, shareholder owning five percent or more of the voting shares of the applicant, partner, or member was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law.

(3) If an applicant for a mortgage banker license does not complete the license application and fails to respond to a notice or notices from the

department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

(4)(a) All initial licenses shall remain in full force and effect until the next succeeding December 31. Mortgage banker licenses may be renewed annually by submitting to the director a request for renewal and any supplemental material as required by the director. The mortgage banker licensee shall certify that the information contained in the license application, as subsequently amended, that is on file with the department and the information contained in any supplemental material previously provided to the department remains true and correct.

(b) For the annual renewal of a license to conduct a mortgage banking business under the Residential Mortgage Licensing Act, the fee shall be two hundred dollars plus seventy-five dollars for each branch office, if applicable, and any processing fee allowed under subsection (2) of section 45-748.

(5)(a) The department may place a mortgage banker licensee that is a sole proprietorship on inactive status for a period of up to twelve months upon receipt of a request from the licensee for inactive status. The request shall include notice that the licensee has temporarily suspended business, is not acting as a mortgage banker in this state, and has no pending customer complaints. The department shall notify the licensee within ten business days as to whether the request has been granted and, if granted, of the date of expiration of the inactive status.

(b) If a mortgage banker license becomes inactive under this section, the license shall remain inactive until the license expires, is canceled, is surrendered, is suspended, is revoked, or is reactivated pursuant to subdivision (d) of this subsection.

(c) An inactive mortgage banker licensee may renew such inactive license if the licensee remains otherwise eligible for renewal pursuant to subdivision (4)(a) of this section, except for being covered by a surety bond pursuant to section 45-724. Such renewal shall not reactivate the license.

(d) The department has the authority to reactivate an inactive mortgage banker license following the department's receipt of a request from the inactive licensee that the licensee intends to resume business as a mortgage banker in this state if the inactive mortgage banker licensee meets the conditions for licensing at the time reactivation is requested, including, but not limited to, coverage by a surety bond pursuant to section 45-724.

(e) The department shall issue a notice of cancellation of an inactive mortgage banker license following the expiration of the period of inactive status set by the department pursuant to subdivision (a) of this subsection if the inactive mortgage banker licensee fails to request reactivation of the license prior to the date of expiration.

(6) The director may require a mortgage banker licensee to maintain a minimum net worth, proven by an audit conducted by a certified public accountant, if the director determines that the financial condition of the

licensee warrants such a requirement or that the requirement is in the public interest.

Source: Laws 1989, LB 272, § 9; Laws 1993, LB 121, § 275; Laws 1995, LB 163, § 4; Laws 2003, LB 218, § 4; Laws 2005, LB 533, § 53; Laws 2006, LB 876, § 29; Laws 2007, LB124, § 43; Laws 2008, LB380, § 2; Laws 2009, LB328, § 8; Laws 2012, LB965, § 14; Laws 2015, LB352, § 1.
Effective date August 30, 2015.

Cross References

Administrative Procedure Act, see section 84-920.

45-737 Mortgage banker; licensee; duties.

A licensee licensed as a mortgage banker shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year;

and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services residential mortgage loans. If a licensee ceases to service residential mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service residential mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Residential Mortgage Licensing Act;

(6) Answer in writing, within seven business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Execute and deliver a release of mortgage pursuant to the provisions of section 76-252 or, in the case of a trust deed, execute and deliver a reconveyance pursuant to the provisions of section 76-1014.01;

(8) Maintain a copy of all documents and records relating to each residential mortgage loan and application for a residential mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of three years after the date the residential mortgage loan is funded or the loan application is denied or withdrawn;

(9) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy by the licensee or notice of a filing of an involuntary petition in bankruptcy against the licensee;

(b) The licensee has lost the ability to fund a loan or loans after it had made a loan commitment or commitments and approved a loan application or applications;

(c) Any other state or jurisdiction institutes license denial, cease and desist, suspension, or revocation procedures against the licensee;

(d) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents;

(e) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved seller or seller and servicer;

(f) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents; or

(g) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law; and

(10) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of a material development other than as described in subdivision (9) of this section, including, but not limited to, any of the following:

(a) Business reorganization;

(b) A change of name, trade name, doing business as designation, or main office address;

(c) The establishment of a branch office. Notice of such establishment shall be on a form prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office;

(d) The relocation or closing of a branch office; or

(e) The entry of an order against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents, including orders to which the licensee or other parties consented, by any other state or federal regulator.

Source: Laws 1989, LB 272, § 14; Laws 1994, LB 1275, § 4; Laws 1995, LB 163, § 6; Laws 1995, LB 396, § 1; Laws 1996, LB 1053, § 11; Laws 2003, LB 218, § 8; Laws 2005, LB 533, § 55; Laws 2007, LB124, § 46; R.S.Supp.,2008, § 45-711; Laws 2009, LB328, § 22; Laws 2010, LB892, § 14; Laws 2013, LB290, § 4; Laws 2015, LB352, § 2.

Effective date August 30, 2015.



CHAPTER 46

IRRIGATION AND REGULATION OF WATER

Article.

1. Irrigation Districts.
 - (a) Organization of Districts. 46-101 to 46-117.
 - (d) Construction by District. 46-151.
 - (j) Change of Boundaries. 46-179.
 - (k) Discontinuance of District. 46-185.
 - (r) Contracts for Water Supply. 46-1,145.
 - (u) Merger of Districts. 46-1,160.
2. General Provisions.
 - (r) Republican River Basin Water Sustainability Task Force. 46-2,140, 46-2,141. Repealed.
5. Reclamation Districts. 46-544.
11. Chemigation. 46-1139 to 46-1143.

ARTICLE 1

IRRIGATION DISTRICTS

(a) ORGANIZATION OF DISTRICTS

Section

- 46-101. Irrigation District Act, how cited; irrigation districts; organization; grant of authority.
- 46-102. Terms, defined.
- 46-109. District; divisions; directors; number; election; terms.
- 46-110. District; organization and officers; election; notice; voters; eligibility.
- 46-111. District; organization and officers; election; procedure; canvass of votes; order of board; filing; election precincts.
- 46-115. Subsequent elections; manner; notice.
- 46-116. Election officers; powers and duties; hours of election.
- 46-117. Elections; return and canvass of vote.
- (d) CONSTRUCTION BY DISTRICT
- 46-151. Cost of construction; when payable in bonds; issuance of additional bonds; additional levy.
- (j) CHANGE OF BOUNDARIES
- 46-179. Exclusion of lands; objection made; action of board; election required; notice; procedure.
- (k) DISCONTINUANCE OF DISTRICT
- 46-185. Discontinuance of district; petition; special election; notice; procedure.
- (r) CONTRACTS FOR WATER SUPPLY
- 46-1,145. Contract for water supply; election required, when; notice; procedure; effect of affirmative vote.
- (u) MERGER OF DISTRICTS
- 46-1,160. Merger of districts; election; ballots; canvass; board of directors.

(a) ORGANIZATION OF DISTRICTS

46-101 Irrigation District Act, how cited; irrigation districts; organization; grant of authority.

(1) Sections 46-101 to 46-1,163 shall be known and may be cited as the Irrigation District Act.

(2) Whenever a majority of the electors owning land or holding leasehold estates, or who are entrymen of government lands, in the manner and to the extent provided in the Irrigation District Act, in any district susceptible to one mode of irrigation from a common source and by the same system of works, desire to provide for the irrigation of the same, they may propose the organization of an irrigation district under the act, and when so organized, each district shall have the power conferred by law upon such irrigation district.

Source: Laws 1895, c. 70, § 1, p. 269; Laws 1903, c. 121, § 1, p. 615; Laws 1905, c. 165, § 1, p. 648; Laws 1913, c. 142, § 1, p. 343; R.S.1913, § 3457; Laws 1917, c. 80, § 1, p. 187; C.S.1922, § 2857; C.S.1929, § 46-101; Laws 1937, c. 103, § 1, p. 361; C.S.Supp.,1941, § 46-101; R.S.1943, § 46-101; Laws 2015, LB561, § 1.

Operative date January 1, 2016.

46-102 Terms, defined.

(1) For purposes of the Irrigation District Act:

(a) Elector means any resident of the State of Nebraska, owning not less than fifteen acres of land, or who is an entryman of government land, within any irrigation district or proposed irrigation district, or any resident of the State of Nebraska holding a leasehold estate in not less than forty acres of state land within such irrigation district for a period of not less than five years from the date at which such elector seeks to exercise the elective franchise; and

(b) Residence means (i) that place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, or (ii) the place where a person has his or her family domiciled even if he or she does business in another place.

(2) If an elector resides outside of the irrigation district, the elector shall be considered an elector in the division of the irrigation district in which his or her land is situated or, if the elector is the owner of land in more than one division of the irrigation district, the elector shall be considered an elector in the division of the district in which the majority of his or her land is situated.

(3) In the case of land owned or leased by joint tenants, each joint tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per joint tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(4) In the case of land owned or leased by tenants in common, each tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(5) In the case of land owned or leased by a corporation, limited liability company, limited liability partnership, joint venture, or other legal entity which meets the minimum acreage requirements of subsection (1) of this section, the entity shall designate a shareholder, member, or partner of the entity who is a resident of the State of Nebraska to act as the elector on behalf of the entity. The entity shall identify its elector-designee in writing to the secretary of the

board of directors of the irrigation district not less than thirty days prior to an irrigation district election.

(6) In the case of land owned or leased under a life tenancy, each remainderman who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per remainderman is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(7) In the case of land held by a buyer in possession pursuant to a land-purchase contract when the total acreage under the land-purchase contract meets the minimum acreage requirements of subsection (1) of this section and the buyer in possession is a resident of the State of Nebraska and is responsible for paying the real property taxes and the irrigation fees and assessments, the buyer in possession is the elector.

(8) In the case of land owned or leased by a trust which meets the minimum acreage requirements of subsection (1) of this section, the trustee shall designate a trustor, beneficiary, or trustee of the trust who is a resident of the State of Nebraska to act as the elector on behalf of the trust. The trust shall identify its elector-designee in writing to the secretary of the board of directors not less than thirty days prior to an irrigation district election.

(9) In the case of a pending estate of a deceased elector involving land which meets the minimum acreage requirements of subsection (1) of this section, the duly appointed personal representative of the estate who is a resident of the State of Nebraska shall act as the elector on behalf of the estate.

(10) Prior to formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage, the election commissioner or county clerk shall determine the party entitled to vote. In such cases, the determination of the election commissioner or county clerk shall be conclusive. After formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage or any other conflict arises regarding the qualification of an elector, the secretary of the board of directors of the irrigation district shall determine the party entitled to vote. The secretary's determination shall be conclusive. If a claim involves the secretary of the board, the board of election for the affected irrigation district precinct shall determine the party entitled to vote. In such cases, the determination of the board of election shall be conclusive.

Source: Laws 1913, c. 142, § 1, p. 343; R.S.1913, § 3457; Laws 1917, c. 80, § 1, p. 188; C.S.1922, § 2857; C.S.1929, § 46-101; Laws 1937, c. 103, § 1, p. 362; C.S.Supp.,1941, § 46-101; R.S.1943, § 46-102; Laws 2015, LB561, § 2.
Operative date January 1, 2016.

46-109 District; divisions; directors; number; election; terms.

(1) Except as otherwise provided in subsections (2) and (3) of this section, the county board shall make an order dividing the irrigation district into three divisions as nearly equal in size as may be practicable, which shall be numbered first, second, and third, and one director shall be elected for each division.

(2) After formation of an irrigation district, in districts comprising over twenty-five thousand acres, the electors thereof may determine by a majority vote to increase the number of directors in any multiple of three up to nine,

whereupon the district may be divided into as many divisions as there are directors agreed upon. One-third of the number of directors so elected shall retire each year, and the order of their retirement may be agreed upon by the directors of the district, and successors shall be elected in the manner provided for the election of directors in other districts. The election for the increased number of directors shall be called upon a petition signed by twenty percent of the electors of the district presented to the then board of directors.

(3) After formation of an irrigation district, in districts comprising less than fifteen thousand acres, upon the majority vote of the board of directors, the question of whether the divisions in the irrigation district may be eliminated and the subsequent election of the directors conducted on an at-large basis may be submitted to the electors. The divisions in the district shall be eliminated and the directors elected on an at-large basis only upon the affirmative vote of two-thirds of the electors of the district.

Source: Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 617; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-109; Laws 1972, LB 1509, § 1; Laws 2015, LB561, § 3. Operative date January 1, 2016.

46-110 District; organization and officers; election; notice; voters; eligibility.

(1) After dividing the proposed irrigation district into divisions, the county board shall give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the Irrigation District Act. Such notice shall describe the boundaries as established and shall designate a name for such proposed district. The notice shall be published for at least three weeks prior to such election in a newspaper of general circulation in the county; and if any portion of such proposed district lies within another county or counties, then the notice shall be published in a newspaper of general circulation within each of such counties. The notice shall include the contents of the ballots to be cast and the date, time, place, and manner of the election, with instructions and deadlines to request and cast a ballot by mail. The ballot shall contain the words Irrigation district Yes, or Irrigation district No, or words equivalent thereto; and also the names of persons to be voted for to fill various elective offices prescribed in the Irrigation District Act.

(2) No person shall be entitled to vote at any election held under the Irrigation District Act unless he or she is qualified as an elector as provided in section 46-102. For any election under the Irrigation District Act, status as an elector shall be established by a record date designated by the election commissioner or county clerk for initial organization of the irrigation district or designated by the secretary of the board of directors for all other elections. The record date shall not be more than thirty days prior to the election. After such record date, a person may be allowed to vote when such person establishes his or her status as an elector to the satisfaction of the election commissioner or county clerk for initial organization of the district or to the satisfaction of the secretary of the board of directors for all other elections. The determination of

the election commissioner, county clerk, or secretary of the board of directors, as the case may be, shall be conclusive.

Source: Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 617; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 193; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-110; Laws 2015, LB561, § 4.
Operative date January 1, 2016.

46-111 District; organization and officers; election; procedure; canvass of votes; order of board; filing; election precincts.

(1) Irrigation district elections shall be conducted in accordance with the Irrigation District Act.

(2) The county board shall meet on the second Monday next succeeding any irrigation district election or next succeeding the deadline for casting ballots in an irrigation district election by mail and canvass the votes cast at the election or by mail. If upon such canvass of the election for the formation of the district it appears that at least a majority of all votes cast are Irrigation district Yes, the county board shall by an order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style therefor designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. The county board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county register of deeds of each county in which any portion of such lands are situated and shall also immediately forward a copy thereof to the clerk of the county board of each of the counties in which any portion of the district may lie; and no county board of any county, including any portion of such district, shall, after the date of the organization of such district, allow another district to be formed including any of the lands of such district, without the consent of the board of directors thereof. From and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall be entitled to immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively until their successors are elected and qualified. For the purpose of the election for the formation of the district, the county board shall establish one or more election precincts in the proposed district, and define the boundary or boundaries thereof, which may thereafter be changed by the board of directors of such district.

Source: Laws 1895, c. 70, § 3, p. 272; R.S.1913, § 3459; Laws 1919, c. 111, § 1, p. 273; C.S.1922, § 2859; C.S.1929, § 46-103; R.S.1943, § 46-111; Laws 1951, c. 148, § 1, p. 595; Laws 2015, LB561, § 5.
Operative date January 1, 2016.

Cross References

Election laws, generally, see Chapter 32.

Voting by mail, absentee voters, see sections 32-938 to 32-951.

Voting by mail, special election procedures, see sections 32-952 to 32-959.

46-115 Subsequent elections; manner; notice.

(1) Fifteen days before any election which is not held by mail under the Irrigation District Act subsequent to the organization of the irrigation district, the secretary of the board of directors shall cause notice to be published in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include the date, time, place, and manner of holding the election. The secretary shall also post a general notice of the same in the office of the board, which shall be established and kept at some fixed place to be determined by the board, specifying the polling places, if any, of each precinct of the irrigation district.

(2) Each year the board of directors of an irrigation district shall determine whether to hold the subsequent regular election of the irrigation district by mail. The board of directors may determine to hold any other election by mail under the Irrigation District Act if the decision to hold the election by mail is made at least forty-five days prior to the date set for such election. The secretary of the board of directors shall, at least thirty days prior to the date set for the election, mail to the last-known post office address of each elector a ballot which lists the names of the candidates and gives instructions and the deadlines to return the ballot. The secretary shall publish notice of the election by mail in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include instructions and the deadlines for requesting a ballot and instructions and the deadlines for casting ballots by mail. The notice shall also include the time and place designated for processing and counting the ballots cast by mail.

(3) Prior to the time for posting the notices, the board of directors shall appoint three residents from each precinct, one clerk and two judges, who shall constitute a board of election for such precinct. If the board of directors fails to appoint a board of election or the members appointed do not attend at the opening of the polls on the morning of election or at the time and place for processing and counting the ballots cast by mail, as the case may be, the electors of the precinct present at that hour may appoint the board. The board of directors must, in its order appointing the board of election, designate the hour and place in the precinct where the election must be held or the time and place for processing and counting the ballots cast by mail, as the case may be.

Source: Laws 1895, c. 70, § 5, p. 274; R.S.1913, § 3461; C.S.1922, § 2861; C.S.1929, § 46-105; R.S.1943, § 46-115; Laws 1951, c. 148, § 2, p. 596; Laws 2015, LB561, § 6.
Operative date January 1, 2016.

Cross References

Voting by mail, absentee voters, see sections 32-938 to 32-951.

Voting by mail, special election procedures, see sections 32-952 to 32-959.

46-116 Election officers; powers and duties; hours of election.

(1) One of the judges shall be chairperson of the board of election and may (a) administer all oaths required in the progress of an election under the Irrigation District Act and (b) appoint judges and clerks, if during the progress of the election or processing and counting ballots cast by mail, as the case may be, any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election or the processing and counting of ballots cast by mail, as the case may be. Before opening the polls or processing and

counting ballots cast by mail, each member of the board of election must take and subscribe to an oath to faithfully perform the duties imposed upon him or her by law. Any elector of the precinct may administer and certify such oath.

(2) For elections other than those conducted by mail, the polls must be opened at 8 a.m. on the morning of the election and be kept open until 6 p.m. of the same day, except that in districts embracing twelve thousand acres or less, the polls may, by direction of the board of directors, be opened at 1 p.m. and be kept open until 5:30 p.m. of the same day.

Source: Laws 1895, c. 70, § 6, p. 274; Laws 1913, c. 22, § 1, p. 94; R.S.1913, § 3462; C.S.1922, § 2862; C.S.1929, § 46-106; R.S. 1943, § 46-116; Laws 2015, LB561, § 7.
Operative date January 1, 2016.

46-117 Elections; return and canvass of vote.

(1) Elections under the Irrigation District Act, together with the ballots cast thereat, shall be certified by the boards of election for the precincts to the board of directors of the irrigation district within three days after the election or the deadline for casting ballots by mail.

(2) No lists, tally paper, or certificate returned from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were opened or ballots were mailed have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until all the returns have been received or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for and declaring the result thereof.

Source: Laws 1895, c. 70, § 7, p. 275; R.S.1913, § 3463; C.S.1922, § 2863; C.S.1929, § 46-107; R.S.1943, § 46-117; Laws 2015, LB561, § 8.
Operative date January 1, 2016.

(d) CONSTRUCTION BY DISTRICT

46-151 Cost of construction; when payable in bonds; issuance of additional bonds; additional levy.

The cost and expense of purchasing and acquiring property and constructing the works and improvements provided for in the Irrigation District Act shall be wholly paid out of the construction fund, or in the bonds of the irrigation district at their par value, after having first advertised the same for sale as provided in section 46-1,100, and having received no bids therefor of ninety-five percent or upwards of their face value. In case such bonds or the money raised by their sale is insufficient for the purposes for which the bonds were issued, additional bonds may be issued, after submission of the question at a general or special election to the electors of the district. In case of the issuance of additional bonds, the lien for taxes for the payment of the interest and principal of such issue shall be a subsequent lien to any prior bond issue. However, the provisions of this section shall not apply where the cost and expense of

purchasing and acquiring property and constructing the works and improvements provided for in the Irrigation District Act are covered by contract between the district and the United States. In lieu of the issuance of additional bonds, the board of directors may provide for the completion of the irrigation system of the district by the levy of an assessment therefor in the same manner in which levy of an assessment is made for the other purposes provided in the Irrigation District Act.

Source: Laws 1895, c. 70, § 24, p. 287; Laws 1899, c. 78, § 2, p. 334; Laws 1913, c. 37, § 1, p. 131; R.S.1913, § 3482; Laws 1915, c. 69, § 8, p. 179; C.S.1922, § 2882; C.S.1929, § 46-127; R.S.1943, § 46-151; Laws 2015, LB561, § 9.
Operative date January 1, 2016.

(j) CHANGE OF BOUNDARIES

46-179 Exclusion of lands; objection made; action of board; election required; notice; procedure.

If the assent of the holders of the bonds is filed and entered of record as provided in section 46-178, and if there are objections presented by any person showing cause which have not been withdrawn, then the board of directors may order an election to be held in the irrigation district to determine whether an order shall be made excluding such lands from the district as mentioned in the resolution. The notice of such election shall describe the boundaries of all the lands which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election in a newspaper of general circulation within the county where the office of the board of directors is situated; and if any portion of such territory to be excluded lies within another county or counties, then such notice shall be so published in a newspaper of general circulation in each of such counties. Such notice shall require the electors to cast ballots which shall contain the words For exclusion, or Against exclusion, or words equivalent thereto. Such election shall otherwise be conducted in accordance with sections 46-115 to 46-118.

Source: Laws 1895, c. 70, § 52, p. 299; R.S.1913, § 3509; C.S.1922, § 2909; C.S.1929, § 46-154; R.S.1943, § 46-179; Laws 2015, LB561, § 10.
Operative date January 1, 2016.

Cross References

For election laws, see Chapter 32.

(k) DISCONTINUANCE OF DISTRICT

46-185 Discontinuance of district; petition; special election; notice; procedure.

Whenever a majority of the assessment payers, representing a majority of the number of acres of irrigable land within any irrigation district, petition the board of directors to call a special election for the purpose of submitting to the electors of such irrigation district a proposition to vote on the discontinuance of such irrigation district and a settlement of its bonded and other indebtedness, the board of directors shall call an election, setting forth the object of the same, and cause a notice of such election to be published in some newspaper of

general circulation in each of the counties in which the district is located, for a period of thirty days prior to such election, setting forth the time and place for holding such election in each of the voting precincts in the district, and shall also cause a written or printed notice of such election to be posted in some conspicuous place in each of the voting precincts. The board of directors shall provide ballots to be used at such election on which shall be written or printed the words For discontinuance Yes, and For discontinuance No. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118.

Source: Laws 1897, c. 91, §§ 1, 2, p. 372; Laws 1903, c. 123, § 1, p. 625; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S. 1943, § 46-185; Laws 2015, LB561, § 11.
Operative date January 1, 2016.

(r) CONTRACTS FOR WATER SUPPLY

46-1,145 Contract for water supply; election required, when; notice; procedure; effect of affirmative vote.

If such contract provides for payments to be made extending for a period of more than one year from the date of making the contract, the board of directors of such irrigation district shall submit the contract to the electors of the district at any general election or at a special election called therefor for the approval or disapproval of the contract. The ballots at the election shall have printed thereon For approval of contract for water supply, and Against approval of contract for water supply. The notice of the election need not give the entire contract but shall be sufficient if it states in a general way the substance of the proposed contract. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118. If a majority of the electors that vote on the proposition vote for approval of the contract, the board of directors shall enter into the contract and shall thereafter, at the time the other taxes of the district are levied, levy a tax on the taxable property of the district sufficient to pay the amount due and to become due on the contract before the next annual levy in the district.

Source: Laws 1915, c. 205, § 3, p. 442; C.S.1922, § 2946; C.S.1929, § 46-203; R.S.1943, § 46-1,145; Laws 2015, LB561, § 12.
Operative date January 1, 2016.

(u) MERGER OF DISTRICTS

46-1,160 Merger of districts; election; ballots; canvass; board of directors.

The board of directors of the irrigation districts to be merged shall provide ballots to be used at such election. The return of the election, together with the ballots cast thereat, shall be certified by the boards of election of such districts to the persons who will serve as the board of directors of the merged district if the merger is approved, within three days after the election or within three days after the deadline to submit ballots by mail, as the case may be, which board shall, on or before the third day after the election, canvass such returns and declare the result of such election, which result shall be at once recorded by the secretary of the board of directors in the records of the district boards and

certified to the county clerk. The election and the return thereof shall otherwise be conducted in accordance with sections 46-115 to 46-118.

Source: Laws 1972, LB 1509, § 8; Laws 2015, LB561, § 13.
Operative date January 1, 2016.

ARTICLE 2 GENERAL PROVISIONS

(r) REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

Section

46-2,140. Repealed. Laws 2015, LB 9, § 1.

46-2,141. Repealed. Laws 2015, LB 9, § 1.

(r) REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

46-2,140 Repealed. Laws 2015, LB 9, § 1.

46-2,141 Repealed. Laws 2015, LB 9, § 1.

ARTICLE 5 RECLAMATION DISTRICTS

Section

46-544. Special assessments; levy; limitation.

46-544 Special assessments; levy; limitation.

(1) If the board of a reclamation district determines in any year that there are certain lands within the district, not included within Classes B, C, and D, which receive special direct benefits from recharging of the ground water reservoirs by water originating from district works, the board shall in such year fix an amount to be levied upon the taxable value of the taxable property as a special assessment which in the opinion of the board will compensate the district for the special direct benefits accruing to such property by reason of recharged ground water reservoirs under such land by water originating from the district works. Such amount shall in no case exceed, together with all other amounts levied made under Class A on such land, the sum of fourteen cents on each one hundred dollars of the taxable value of the land. Such owner of lands specially assessed for special direct benefits shall have notice, hearing, and the right of appeal and shall be governed by section 46-554.

(2) The authority provided in this section may not be used if the district has obtained approval to levy fees or assessments pursuant to section 46-2,101.

Source: Laws 1947, c. 173, § 15(2), p. 540; Laws 1969, c. 145, § 38, p. 696; Laws 1979, LB 187, § 173; Laws 1983, LB 198, § 21; Laws 1992, LB 1063, § 40; Laws 1992, Second Spec. Sess., LB 1, § 40; Laws 2015, LB361, § 57.
Effective date August 30, 2015.

Cross References

Budget Act, Nebraska, section included, see section 13-501.

ARTICLE 11
CHEMIGATION

Section

- 46-1139. Engaging in chemigation without a permit; penalty; recovery of costs.
46-1140. Engaging in chemigation with a suspended or revoked permit; penalty; recovery of costs.
46-1141. Tampering with chemigation equipment; penalty; recovery of costs.
46-1142. Failure to notify of accident; penalty; recovery of costs.
46-1143. Other violations; penalty; recovery of costs.

46-1139 Engaging in chemigation without a permit; penalty; recovery of costs.

Any person who engages in chemigation without first obtaining a chemigation permit shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 39; Laws 2015, LB207, § 1.
Effective date August 30, 2015.

46-1140 Engaging in chemigation with a suspended or revoked permit; penalty; recovery of costs.

Any person who engages in chemigation with a suspended or revoked chemigation permit shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 40; Laws 2015, LB207, § 2.
Effective date August 30, 2015.

46-1141 Tampering with chemigation equipment; penalty; recovery of costs.

Any person who willfully tampers with or otherwise willfully damages in any way equipment meeting the requirements specified in section 46-1127 shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class I misdemeanor. Each day of continued violation shall constitute a separate

offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 41; Laws 2015, LB207, § 3.
Effective date August 30, 2015.

46-1142 Failure to notify of accident; penalty; recovery of costs.

Any permitholder who fails to notify the district and the department of any actual or suspected accident resulting from the use of chemigation shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 42; Laws 2015, LB207, § 4.
Effective date August 30, 2015.

46-1143 Other violations; penalty; recovery of costs.

Any person who violates any of the provisions of the Nebraska Chemigation Act for which a specific penalty is not provided shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class IV misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 43; Laws 2015, LB207, § 5.
Effective date August 30, 2015.

CHAPTER 47
JAILS AND CORRECTIONAL FACILITIES

Article.

- 7. Medical Services. 47-706.
- 9. Office of Inspector General of the Nebraska Correctional System Act. 47-901 to 47-918.

ARTICLE 7
MEDICAL SERVICES

Section

47-706. Medical assistance; federal financial participation; legislative intent; Department of Health and Human Services; Department of Correctional Services; duties.

47-706 Medical assistance; federal financial participation; legislative intent; Department of Health and Human Services; Department of Correctional Services; duties.

(1) It is the intent of the Legislature to ensure that human services agencies, correctional facilities, and detention facilities recognize that:

(a) Federal law generally does not authorize federal financial participation for medicaid when a person is an inmate of a public institution as defined in federal law but that federal financial participation is available after an inmate is released from incarceration; and

(b) The fact that an applicant is currently an inmate does not, in and of itself, preclude the Department of Health and Human Services from processing an application submitted to it by, or on behalf of, the inmate.

(2)(a) Medical assistance under the medical assistance program shall be suspended, rather than canceled or terminated, for a person who is an inmate of a public institution if:

(i) The Department of Health and Human Services is notified of the person's entry into the public institution;

(ii) On the date of entry, the person was enrolled in the medical assistance program; and

(iii) The person is eligible for the medical assistance program except for institutional status.

(b) A suspension under subdivision (2)(a) of this section shall end on the date the person is no longer an inmate of a public institution.

(c) Upon release from incarceration, such person shall continue to be eligible for receipt of medical assistance until such time as the person is otherwise determined to no longer be eligible for the medical assistance program.

(3)(a) The Department of Correctional Services shall notify the Department of Health and Human Services:

(i) Within twenty days after receiving information that a person receiving medical assistance under the medical assistance program is or will be an inmate of a public institution; and

(ii) Within forty-five days prior to the release of a person who qualified for suspension under subdivision (2)(a) of this section.

(b) Local correctional facilities, juvenile detention facilities, and other temporary detention centers shall notify the Department of Health and Human Services within ten days after receiving information that a person receiving medical assistance under the medical assistance program is or will be an inmate of a public institution.

(4) Nothing in this section shall create a state-funded benefit or program.

(5) For purposes of this section, medical assistance program means the medical assistance program under the Medical Assistance Act and the State Children's Health Insurance Program.

(6) This section shall be implemented only if, and to the extent, allowed by federal law. This section shall be implemented only to the extent that any necessary federal approval of state plan amendments or other federal approvals are obtained. The Department of Health and Human Services shall seek such approval if required.

(7) Local correctional facilities, the Nebraska Commission on Law Enforcement and Criminal Justice, and the Office of Probation Administration shall cooperate with the Department of Health and Human Services and the Department of Correctional Services for purposes of facilitating information sharing to achieve the purposes of this section.

(8)(a) The Department of Correctional Services shall adopt and promulgate rules and regulations, in consultation with the Department of Health and Human Services and local correctional facilities, to carry out this section.

(b) The Department of Health and Human Services shall adopt and promulgate rules and regulations, in consultation with the Department of Correctional Services and local correctional facilities, to carry out this section.

Source: Laws 2015, LB605, § 108.

Effective date August 30, 2015.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 9

**OFFICE OF INSPECTOR GENERAL OF THE NEBRASKA
CORRECTIONAL SYSTEM ACT**

Section

47-901. Act, how cited.

47-902. Legislative intent.

47-903. Terms, defined.

47-904. Office of Inspector General of the Nebraska Correctional System; created; Inspector General; appointment; term; qualifications; employees; removal.

47-905. Office; duties; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.

47-906. Office; access to information and personnel; investigation.

47-907. Complaints to office; form; full investigation; when; notice.

47-908. Cooperation with office; when required.

Section

- 47-909. Failure to cooperate; effect.
- 47-910. Inspector General; powers; rights of person required to provide information.
- 47-911. Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.
- 47-912. Reports of investigations; distribution; redact confidential information; powers of office.
- 47-913. Department; provide direct computer access.
- 47-914. Inspector General's report of investigation; contents; distribution.
- 47-915. Report; director; accept, reject, or request modification; when final; written response; corrected report; appended material.
- 47-916. Report or work product; no court review.
- 47-917. Inspector General; investigation of complaints; priority and selection.
- 47-918. Summary of reports and investigations; contents.

47-901 Act, how cited.

Sections 47-901 to 47-918 shall be known and may be cited as the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 1.
Effective date August 30, 2015.

47-902 Legislative intent.

(1) It is the intent of the Legislature to:

(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska correctional system;

(b) Assist in improving operations of the department and the Nebraska correctional system;

(c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the supervision and release of persons in the Nebraska correctional system. A lack of responsibility and accountability between individuals and private agencies in the current system make it difficult to monitor and oversee the Nebraska correctional system; and

(d) Provide a process for investigation and review in order to improve policies and procedures of the correctional system.

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of the Nebraska Correctional System Act to interfere with the duties of the Legislative Auditor or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state government, except that the act does not preclude an inquiry on the sole basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogatives of the Governor to investigate, monitor, and report on the activities of the agencies, boards, bureaus, commissions, associations, societies, and institutions of the executive branch under his or her administrative direction.

Source: Laws 2015, LB598, § 2.
Effective date August 30, 2015.

47-903 Terms, defined.

For purposes of the Office of Inspector General of the Nebraska Correctional System Act, the following definitions apply:

- (1) Administrator means a person charged with administration of a program, an office, or a division of the department or administration of a private agency;
- (2) Department means the Department of Correctional Services;
- (3) Director means the Director of Correctional Services;
- (4) Inspector General means the Inspector General of the Nebraska Correctional System appointed under section 47-904;
- (5) Malfeasance means a wrongful act that the actor has no legal right to do or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty;
- (6) Management means supervision of subordinate employees;
- (7) Misfeasance means the improper performance of some act that a person may lawfully do;
- (8) Obstruction means hindering an investigation, preventing an investigation from progressing, stopping or delaying the progress of an investigation, or making the progress of an investigation difficult or slow;
- (9) Office means the office of Inspector General of the Nebraska Correctional System and includes the Inspector General and other employees of the office;
- (10) Private agency means an entity that contracts with the department or contracts to provide services to another entity that contracts with the department; and
- (11) Record means any recording in written, audio, electronic transmission, or computer storage form, including, but not limited to, a draft, memorandum, note, report, computer printout, notation, or message, and includes, but is not limited to, medical records, mental health records, case files, clinical records, financial records, and administrative records.

Source: Laws 2015, LB598, § 3.
Effective date August 30, 2015.

47-904 Office of Inspector General of the Nebraska Correctional System; created; Inspector General; appointment; term; qualifications; employees; removal.

(1) The office of Inspector General of the Nebraska Correctional System is created within the office of Public Counsel for the purpose of conducting investigations, audits, inspections, and other reviews of the Nebraska correctional system. The Inspector General shall be appointed by the Public Counsel with approval from the chairperson of the Executive Board of the Legislative Council and the chairperson of the Judiciary Committee of the Legislature.

(2) The Inspector General shall be appointed for a term of five years and may be reappointed. The Inspector General shall be selected without regard to political affiliation and on the basis of integrity, capability for strong leadership, and demonstrated ability in accounting, auditing, financial analysis, law, management, public administration, investigation, or criminal justice administration or other closely related fields. No former or current executive or manager of the department shall be appointed Inspector General within five years after such former or current executive's or manager's period of service with the department. Not later than two years after the date of appointment, the

Inspector General shall obtain certification as a Certified Inspector General by the Association of Inspectors General, its successor, or another nationally recognized organization that provides and sponsors educational programs and establishes professional qualifications, certifications, and licensing for inspectors general. During his or her employment, the Inspector General shall not be actively involved in partisan affairs.

(3) The Inspector General shall employ such investigators and support staff as he or she deems necessary to carry out the duties of the office within the amount available by appropriation through the office of Public Counsel for the office of Inspector General of the Nebraska Correctional System. The Inspector General shall be subject to the control and supervision of the Public Counsel, except that removal of the Inspector General shall require approval of the chairperson of the Executive Board of the Legislative Council and the chairperson of the Judiciary Committee of the Legislature.

Source: Laws 2015, LB598, § 4.

Effective date August 30, 2015.

47-905 Office; duties; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of the department by an employee of or a person under contract with the department or a private agency; and

(b) Death or serious injury in private agencies, department correctional facilities, and other programs and facilities licensed by or under contract with the department. The department shall report all cases of death or serious injury of a person in a private agency, department correctional facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department learns of such death or serious injury. For purposes of this subdivision, serious injury means an injury or illness caused by malfeasance or misfeasance which leaves a person in critical or serious condition.

(2) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to sections 23-1821 to 23-1823.

(3) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of the Nebraska Correctional System Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the

Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any person who has already been interviewed by a law enforcement agency in connection with a relevant ongoing investigation of a law enforcement agency.

Source: Laws 2015, LB598, § 5.
Effective date August 30, 2015.

47-906 Office; access to information and personnel; investigation.

(1) The office shall have access to all information and personnel necessary to perform the duties of the office.

(2) A full investigation conducted by the office shall consist of retrieval of relevant records through subpoena, request, or voluntary production, review of all relevant records, and interviews of all relevant persons.

Source: Laws 2015, LB598, § 6.
Effective date August 30, 2015.

47-907 Complaints to office; form; full investigation; when; notice.

(1) Complaints to the office may be made in writing. A complaint shall be evaluated to determine if it alleges possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department by an employee of or a person under contract with the department or a private agency. All complaints shall be evaluated to determine whether a full investigation is warranted.

(2) The office shall not conduct a full investigation of a complaint unless:

(a) The complaint alleges misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department;

(b) The complaint is against a person within the jurisdiction of the office; and

(c) The allegations can be independently verified through investigation.

(3) The Inspector General shall determine within fourteen days after receipt of a complaint whether the office will conduct a full investigation.

(4) When a full investigation is opened on a private agency that contracts with the department, the Inspector General shall give notice of such investigation to the department.

Source: Laws 2015, LB598, § 7.
Effective date August 30, 2015.

47-908 Cooperation with office; when required.

All employees of the department and all owners, operators, managers, supervisors, and employees of private agencies shall cooperate with the office. Cooperation includes, but is not limited to, the following:

(1) Provision of full access to and production of records and information. Providing access to and producing records and information for the office is not a violation of confidentiality provisions under any statute, rule, or regulation if done in good faith for purposes of an investigation under the Office of Inspector General of the Nebraska Correctional System Act;

(2) Fair and honest disclosure of records and information reasonably requested by the office in the course of an investigation under the act;

(3) Encouraging employees to fully comply with reasonable requests of the office in the course of an investigation under the act;

(4) Prohibition of retaliation by owners, operators, or managers against employees for providing records or information or filing or otherwise making a complaint to the office;

(5) Not requiring employees to gain supervisory approval prior to filing a complaint with or providing records or information to the office;

(6) Provision of complete and truthful answers to questions posed by the office in the course of an investigation; and

(7) Not willfully interfering with or obstructing the investigation.

Source: Laws 2015, LB598, § 8.

Effective date August 30, 2015.

47-909 Failure to cooperate; effect.

Failure to cooperate with an investigation by the office may result in discipline or other sanctions.

Source: Laws 2015, LB598, § 9.

Effective date August 30, 2015.

47-910 Inspector General; powers; rights of person required to provide information.

The Inspector General may issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned.

Source: Laws 2015, LB598, § 10.

Effective date August 30, 2015.

47-911 Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.

(1) In conducting investigations, the office shall access all relevant records through subpoena, compliance with a request by the office, and voluntary production. The office may request or subpoena any record necessary for the investigation from the department or a private agency that is pertinent to an investigation. All case files, licensing files, medical records, financial and administrative records, and records required to be maintained pursuant to applicable licensing rules shall be produced for review by the office in the course of an investigation.

(2) Compliance with a request of the office includes:

- (a) Production of all records requested;
- (b) A diligent search to ensure that all appropriate records are included; and
- (c) A continuing obligation to immediately forward to the office any relevant records received, located, or generated after the date of the request.

(3) The office shall seek access in a manner that respects the dignity and human rights of all persons involved, maintains the integrity of the investigation, and does not unnecessarily disrupt department programs or services. When advance notice to an administrator or his or her designee is not provided, the office investigator shall, upon arrival at the departmental office, bureau, or division or private agency, request that an onsite employee notify the administrator or his or her designee of the investigator's arrival.

(4) When circumstances of an investigation require, the office may make an unannounced visit to a departmental office, bureau, or division, a department correctional facility, or a private agency to request records relevant to an investigation.

(5) A responsible individual or an administrator may be asked to sign a statement of record integrity and security when a record is secured by request as the result of a visit by the office, stating:

(a) That the responsible individual or the administrator has made a diligent search of the office, bureau, division, private agency, or department correctional facility to determine that all appropriate records in existence at the time of the request were produced;

(b) That the responsible individual or the administrator agrees to immediately forward to the office any relevant records received, located, or generated after the visit;

(c) The persons who have had access to the records since they were secured; and

(d) Whether, to the best of the knowledge of the responsible individual or the administrator, any records were removed from or added to the record since it was secured.

(6) The office shall permit a responsible individual, an administrator, or an employee of a departmental office, bureau, or division, a private agency, or a department correctional facility to make photocopies of the original records within a reasonable time in the presence of the office for purposes of creating a working record in a manner that assures confidentiality.

(7) The office shall present to the responsible individual or the administrator or other employee of the departmental office, bureau, or division, private agency, or department correctional facility a copy of the request, stating the date and the titles of the records received.

(8) If an original record is provided during an investigation, the office shall return the original record as soon as practical but no later than ten working days after the date of the compliance request.

(9) All investigations conducted by the office shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

Source: Laws 2015, LB598, § 11.

Effective date August 30, 2015.

47-912 Reports of investigations; distribution; redact confidential information; powers of office.

(1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) The office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to the chairperson of the Judiciary Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska correctional system.

(3) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(4) The office may withhold the identity of sources of information to protect from retaliation any person who files a complaint or provides information in good faith pursuant to the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 12.
Effective date August 30, 2015.

47-913 Department; provide direct computer access.

The department shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the department in connection with administration of the Nebraska correctional system, except that the Public Counsel's and Inspector General's access to an inmate's medical or mental health records shall be subject to the inmate's consent.

Source: Laws 2015, LB598, § 13.
Effective date August 30, 2015.

47-914 Inspector General's report of investigation; contents; distribution.

(1) The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of employees or for sanctions against a private agency. All recommendations to pursue discipline shall be in writing and signed by the Inspector General. A report of an investigation shall be presented to the director within fifteen days after the report is presented to the Public Counsel.

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report. The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

(3) A report that identifies misconduct, misfeasance, malfeasance, violation of statute, or violation of rules and regulations by an employee of the department or a private agency that is relevant to providing appropriate supervision of an employee may be shared with the employer of such employee. The employer

may not further distribute the report or any confidential information contained in the report.

Source: Laws 2015, LB598, § 14.
Effective date August 30, 2015.

47-915 Report; director; accept, reject, or request modification; when final; written response; corrected report; appended material.

(1) Within fifteen days after a report is presented to the director under section 47-914, he or she shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The Inspector General, with input from the Public Counsel, may consider the director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director to accept or reject the recommendations in the report or, if the director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) Within fifteen days after the report is presented to the director, the report shall be presented to the private agency or other provider of correctional services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within forty-five days after receipt of the report, the private agency or other provider may submit a written response to the office to correct any factual errors in the report. The Inspector General, with input from the Public Counsel, shall consider all materials submitted under this subsection to determine whether a corrected report shall be issued. If the Inspector General determines that a corrected report is necessary, the corrected report shall be issued within fifteen days after receipt of the written response.

(3) If the Inspector General does not issue a corrected report pursuant to subsection (2) of this section or if the corrected report does not address all issues raised in the written response, the private agency or other provider may request that its written response, or portions of the response, be appended to the report or corrected report.

Source: Laws 2015, LB598, § 15.
Effective date August 30, 2015.

47-916 Report or work product; no court review.

No report or other work product of an investigation by the Inspector General shall be reviewable in any court. Neither the Inspector General nor any member of his or her staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his or her official cognizance except in a proceeding brought to enforce the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 16.
Effective date August 30, 2015.

47-917 Inspector General; investigation of complaints; priority and selection.

The Office of Inspector General of the Nebraska Correctional System Act does not require the Inspector General to investigate all complaints. The Inspector General, with input from the Public Counsel, shall prioritize and

select investigations and inquiries that further the intent of the act and assist in legislative oversight of the Nebraska correctional system. If the Inspector General determines that he or she will not investigate a complaint, the Inspector General may recommend to the parties alternative means of resolution of the issues in the complaint.

Source: Laws 2015, LB598, § 17.
Effective date August 30, 2015.

47-918 Summary of reports and investigations; contents.

On or before September 15 of each year, the Inspector General shall provide to each member of the Judiciary Committee of the Legislature, the Governor, and the Clerk of the Legislature a summary of reports and investigations made under the Office of Inspector General of the Nebraska Correctional System Act for the preceding year. The summary provided to the Clerk of the Legislature shall be provided electronically. The summaries shall include recommendations and an update on the status of recommendations made in prior summaries, if any. The recommendations may address issues discovered through investigations, audits, inspections, and reviews by the office that will (1) increase accountability and legislative oversight of the Nebraska correctional system, (2) improve operations of the department and the Nebraska correctional system, (3) deter and identify fraud, abuse, and illegal acts, and (4) identify inconsistencies between statutory requirements and requirements for accreditation. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

Source: Laws 2015, LB598, § 18.
Effective date August 30, 2015.



CHAPTER 48

LABOR

Article.

1. Workers' Compensation.
 - Part II— Elective Compensation.
 - (c) Schedule of Compensation. 48-120, 48-125.
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 - (b) Nebraska Workforce Investment Act. 48-1616 to 48-1627. Repealed.
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ARTICLE 1

WORKERS' COMPENSATION

PART II—ELECTIVE COMPENSATION

(c) SCHEDULE OF COMPENSATION

Section

- 48-120. Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.
- 48-125. Compensation; method of payment; delay; appeal; attorney's fees; interest.
- (e) SETTLEMENT AND PAYMENT OF COMPENSATION
- 48-145. Employers; compensation insurance required; exceptions; effect of failure to comply; self-insurer; payments required; deposit with State Treasurer; credited to General Fund.

PART III—MISCELLANEOUS PROVISIONS

- 48-148.01. Denial of compensation; false representation.

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- 48-1,110. Act, how cited.

PART II—ELECTIVE COMPENSATION

(c) SCHEDULE OF COMPENSATION

48-120 Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.

(1)(a) The employer is liable for all reasonable medical, surgical, and hospital services, including plastic surgery or reconstructive surgery but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, pros-

thetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment, and includes damage to or destruction of artificial members, dental appliances, teeth, hearing instruments, and eyeglasses, but, in the case of dental appliances, hearing instruments, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases.

(b) Except as provided in section 48-120.04, the compensation court shall establish schedules of fees for such services. The compensation court shall review such schedules at least biennially and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The compensation court shall publish and furnish to the public the fee schedules established pursuant to this subdivision and section 48-120.04. The compensation court may establish and charge a fee to recover the cost of published fee schedules.

(c) Reimbursement for inpatient hospital services provided by hospitals located in or within fifteen miles of a Nebraska city of the metropolitan class or primary class and by other hospitals with fifty-one or more licensed beds shall be according to the Diagnostic Related Group inpatient hospital fee schedule or the trauma services inpatient hospital fee schedule established in section 48-120.04.

(d) A workers' compensation insurer, risk management pool, self-insured employer, or managed care plan certified pursuant to section 48-120.02 may contract with a provider or provider network for medical, surgical, or hospital services. Such contract may establish fees for services different than the fee schedules established under subdivision (1)(b) of this section or established under section 48-120.04. Such contract shall be in writing and mutually agreed upon prior to the date services are provided.

(e) The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of (i) the fee established by the compensation court for any such service, (ii) the fee established under section 48-120.04, or (iii) the fee contracted under subdivision (1)(d) of this section, including any finance charge or late penalty.

(2)(a) The employee has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court. If the employer fails to notify the employee of such right of selection or fails to notify the employee of such right of selection in a form and manner and within a

timeframe established by the compensation court, then the employee has the right to select a physician. If the employee fails to exercise such right of selection in a form and manner and within a timeframe established by the compensation court following notice by the employer pursuant to this subsection, then the employer has the right to select the physician. If selection of the initial physician is made by the employee or employer pursuant to this subsection following notice by the employer pursuant to this subsection, the employee or employer shall not change the initial selection of physician made pursuant to this subsection unless such change is agreed to by the employee and employer or is ordered by the compensation court pursuant to subsection (6) of this section. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, (i) the employee has the right to select a physician and shall not be made to enter a managed care plan and (ii) the employer is liable for medical, surgical, and hospital services subsequently found to be compensable. If the employer has exercised the right to select a physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services. If the employee selects a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her workers' compensation insurer.

(b) In cases of injury requiring dismemberment or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation.

(c) If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer is not liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

(d) If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee or the employer is unable to select a physician using the procedures provided by this subsection, the selection requirements of this subsection shall not apply as long as the inability to make a selection persists.

(e) The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury requires.

(f) The employer is not responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section. Except as otherwise provided by the Nebraska Workers' Compensation Act, the employer is not liable for medical, surgical, or hospital services or medicines if the employee refuses to allow them to be furnished by the employer.

(3) No claim for such medical treatment is valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer a report of such injury and treatment on a

form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

(4) All physicians and other providers of medical services attending injured employees shall comply with all the rules and regulations adopted and promulgated by the compensation court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. All medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the workers' compensation insurer, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensation claim. When a physician or other provider of medical services willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

(5) Whenever the compensation court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the cost of such examination to the workers' compensation insurer. The cost of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

(6) The compensation court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital, rehabilitation facility, or other medical services when it deems such change is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party or the compensation court on its own motion may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 48-134.01. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

(7) For the purpose of this section, physician has the same meaning as in section 48-151.

(8) The compensation court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimburse-

ment to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

(9) Notwithstanding any other provision of this section, a workers' compensation insurer, risk management pool, or self-insured employer may contract for medical, surgical, hospital, and rehabilitation services to be provided through a managed care plan certified pursuant to section 48-120.02. Once liability for medical, surgical, and hospital services has been accepted or determined, the employer may require that employees subject to the contract receive medical, surgical, and hospital services in the manner prescribed in the contract, except that an employee may receive services from a physician selected by the employee pursuant to subsection (2) of this section if the physician so selected agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the physician so selected agrees to comply with all the rules, terms, and conditions of the managed care plan. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, the employee may leave the managed care plan and the employer is liable for medical, surgical, and hospital services previously provided. The workers' compensation insurer, risk management pool, or self-insured employer shall give notice to employees subject to the contract of eligible service providers and such other information regarding the contract and manner of receiving medical, surgical, and hospital services under the managed care plan as the compensation court may prescribe.

Source: Laws 1913, c. 198, § 20, p. 585; R.S.1913, § 3661; Laws 1917, c. 85, § 6, p. 202; Laws 1919, c. 91, § 1, p. 228; Laws 1921, c. 122, § 1, p. 520; C.S.1922, § 3043; C.S.1929, § 48-120; Laws 1935, c. 57, § 19, p. 197; C.S.Supp.,1941, § 48-120; R.S.1943, § 48-120; Laws 1965, c. 278, § 1, p. 799; Laws 1969, c. 388, § 2, p. 1359; Laws 1969, c. 392, § 1, p. 1376; Laws 1975, LB 127, § 1; Laws 1978, LB 529, § 2; Laws 1979, LB 215, § 1; Laws 1986, LB 811, § 38; Laws 1987, LB 187, § 1; Laws 1992, LB 360, § 13; Laws 1993, LB 757, § 2; Laws 1998, LB 1010, § 2; Laws 1999, LB 216, § 3; Laws 2005, LB 238, § 3; Laws 2007, LB588, § 1; Laws 2009, LB195, § 51; Laws 2011, LB152, § 1; Laws 2015, LB480, § 2. Effective date August 30, 2015.

48-125 Compensation; method of payment; delay; appeal; attorney's fees; interest.

(1)(a) Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.

(b) Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the Nebraska Workers' Compensation Court, except that for any award or judgment against the state in excess of one hundred thousand dollars which must be reviewed by the Legislature as provided in section 48-1,102, fifty percent shall be added for waiting time for

delinquent payments thirty days after the effective date of the legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of one hundred thousand dollars.

(2)(a) Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the compensation court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers.

(b) If the employer files an appeal from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the Court of Appeals or Supreme Court shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such appeal.

(c) If the employee files an appeal from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an appeal from an award of a judge of the compensation court when the amount of compensation due is disputed and obtains an increase in the amount of such award, the Court of Appeals or Supreme Court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such appeal.

(d) A reasonable attorney's fee allowed pursuant to this subsection shall not affect or diminish the amount of the award.

(3) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, until the date payment is made by the employer. For any injury occurring prior to August 30, 2015, the interest rate shall be equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. For any injury occurring on or after August 30, 2015, the interest rate shall be equal to six percentage points above the bond investment yield, as published by the Secretary of the Treasury of the United States, of the average accepted auction price for the first auction of each annual quarter of the twenty-six-week United States Treasury bills in effect on the date of entry of the judgment. Interest shall apply only to those weekly compensation benefits awarded which have accrued as of the date payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

Source: Laws 1913, c. 198, § 25, p. 591; R.S.1913, § 3666; Laws 1917, c. 85, § 9 1/2, p. 208; Laws 1919, c. 91, § 4, p. 234; C.S.1922, § 3048; C.S.1929, § 48-125; Laws 1935, c. 57, § 20, p. 197; C.S.Supp.,1941, § 48-125; R.S.1943, § 48-125; Laws 1973, LB 169, § 1; Laws 1975, LB 187, § 2; Laws 1983, LB 18, § 1; Laws 1986, LB 811, § 43; Laws 1991, LB 732, § 110; Laws 1992, LB

360, § 14; Laws 1999, LB 216, § 6; Laws 2005, LB 13, § 5; Laws 2005, LB 238, § 4; Laws 2009, LB630, § 3; Laws 2011, LB151, § 1; Laws 2015, LB480, § 3.
Effective date August 30, 2015.

(e) SETTLEMENT AND PAYMENT OF COMPENSATION

48-145 Employers; compensation insurance required; exceptions; effect of failure to comply; self-insurer; payments required; deposit with State Treasurer; credited to General Fund.

To secure the payment of compensation under the Nebraska Workers' Compensation Act:

(1) Every employer in the occupations described in section 48-106, except the State of Nebraska and any governmental agency created by the state, shall either (a) insure and keep insured its liability under such act in some corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state, (b) in the case of an employer who is a lessor of one or more commercial vehicles leased to a self-insured motor carrier, be a party to an effective agreement with the self-insured motor carrier under section 48-115.02, (c) be a member of a risk management pool authorized and providing group self-insurance of workers' compensation liability pursuant to the Intergovernmental Risk Management Act, or (d) with approval of the Nebraska Workers' Compensation Court, self-insure its workers' compensation liability.

An employer seeking approval to self-insure shall make application to the compensation court in the form and manner as the compensation court may prescribe, meet such minimum standards as the compensation court shall adopt and promulgate by rule and regulation, and furnish to the compensation court satisfactory proof of financial ability to pay direct the compensation in the amount and manner when due as provided for in the Nebraska Workers' Compensation Act. Approval is valid for the period prescribed by the compensation court unless earlier revoked pursuant to this subdivision or subsection (1) of section 48-146.02. Notwithstanding subdivision (1)(d) of this section, a professional employer organization shall not be eligible to self-insure its workers' compensation liability. The compensation court may by rule and regulation require the deposit of an acceptable security, indemnity, trust, or bond to secure the payment of compensation liabilities as they are incurred. The agreement or document creating a trust for use under this section shall contain a provision that the trust may only be terminated upon the consent and approval of the compensation court. Any beneficial interest in the trust principal shall be only for the benefit of the past or present employees of the self-insurer and any persons to whom the self-insurer has agreed to pay benefits under subdivision (11) of section 48-115 and section 48-115.02. Any limitation on the termination of a trust and all other restrictions on the ownership or transfer of beneficial interest in the trust assets contained in such agreement or document creating the trust shall be enforceable, except that any limitation or restriction shall be enforceable only if authorized and approved by the compensation court and specifically delineated in the agreement or document. The trustee of any trust created to satisfy the requirements of this section may invest the trust assets in the same manner authorized under subdivisions (1)(a) through (i) of section 30-3209 for corporate trustees holding retirement or

pension funds for the benefit of employees or former employees of cities, villages, school districts, or governmental or political subdivisions, except that the trustee shall not invest trust assets into stocks, bonds, or other obligations of the trustor. If, as a result of such investments, the value of the trust assets is reduced below the acceptable trust amount required by the compensation court, then the trustor shall deposit additional trust assets to account for the shortfall.

Notwithstanding any other provision of the Nebraska Workers' Compensation Act, a three-judge panel of the compensation court may, after notice and hearing, revoke approval as a self-insurer if it finds that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing a self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not revoke approval as a self-insurer pursuant to this subdivision. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The presiding judge shall rule on a motion of the Attorney General pursuant to this subdivision and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel. Appeal from a revocation pursuant to this subdivision shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas unless the self-insurer executes to the compensation court a bond with one or more sureties authorized to do business within the State of Nebraska in an amount determined by the three-judge panel to be sufficient to satisfy the obligations of the self-insurer under the act;

(2) An approved self-insurer shall furnish to the State Treasurer an annual amount equal to two and one-half percent of the prospective loss costs for like employment but in no event less than twenty-five dollars. Prospective loss costs is defined in section 48-151. The compensation court is the sole judge as to the prospective loss costs that shall be used. All money which a self-insurer is required to pay to the State Treasurer, under this subdivision, shall be computed and tabulated under oath as of January 1 and paid to the State Treasurer immediately thereafter. The compensation court or designee of the compensation court may audit the payroll of a self-insurer at the compensation court's discretion. All money paid by a self-insurer under this subdivision shall be credited to the General Fund;

(3) Every employer who fails, neglects, or refuses to comply with the conditions set forth in subdivision (1) or (2) of this section shall be required to respond in damages to an employee for personal injuries, or when personal injuries result in the death of an employee, then to his or her dependents; and

(4) Any security, indemnity, trust, or bond provided by a self-insurer pursuant to subdivision (1) of this section shall be deemed a surety for the purposes of the payment of valid claims of the self-insurer's employees and the persons to whom the self-insurer has agreed to pay benefits under the Nebraska Workers'

Compensation Act pursuant to subdivision (11) of section 48-115 and section 48-115.02 as generally provided in the act.

Source: Laws 1913, c. 198, § 46, p. 599; R.S.1913, § 3687; Laws 1917, c. 85, § 21, p. 215; Laws 1921, c. 122, § 1, p. 528; C.S.1922, § 3069; C.S.1929, § 48-146; Laws 1935, c. 57, § 31, p. 202; C.S.Supp.,1941, § 48-146; R.S.1943, § 48-145; Laws 1957, c. 205, § 1, p. 723; Laws 1963, c. 286, § 1, p. 860; Laws 1971, LB 572, § 8; Laws 1986, LB 811, § 67; Laws 1988, LB 1146, § 1; Laws 1997, LB 474, § 4; Laws 1999, LB 216, § 9; Laws 2000, LB 1221, § 8; Laws 2005, LB 13, § 8; Laws 2005, LB 238, § 10; Laws 2010, LB579, § 16; Laws 2015, LB480, § 4.

Effective date August 30, 2015.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.

PART III—MISCELLANEOUS PROVISIONS

48-148.01 Denial of compensation; false representation.

No compensation shall be allowed if, at the time of or in the course of entering into employment or at the time of receiving notice of the removal of conditions from a conditional offer of employment: (1) The employee knowingly and willfully made a false representation as to his or her physical or medical condition by acknowledging in writing that he or she is able to perform the essential functions of the job with or without reasonable accommodation based upon the employer's written job description; (2) the employer relied upon the false representation and the reliance was a substantial factor in the hiring; and (3) a causal connection existed between the false representation and the injury.

Source: Laws 2015, LB480, § 1.

Effective date August 30, 2015.

PART VI—NAME OF ACT AND APPLICABILITY OF CHANGES

48-1,110 Act, how cited.

Sections 48-101 to 48-1,117 shall be known and may be cited as the Nebraska Workers' Compensation Act.

Source: Laws 1986, LB 811, § 136; Laws 1986, LB 1036, § 2; Laws 1990, LB 313, § 4; Laws 1992, LB 360, § 26; Laws 1993, LB 757, § 30; Laws 1997, LB 128, § 7; Laws 1997, LB 474, § 7; Laws 2005, LB 13, § 32; Laws 2007, LB588, § 5; Laws 2010, LB780, § 3; Laws 2011, LB151, § 16; Laws 2015, LB480, § 5.

Effective date August 30, 2015.

ARTICLE 2

GENERAL PROVISIONS

Section

48-238. Veterans preference in private employment; policy; notice to Commissioner of Labor; registry.

48-238 Veterans preference in private employment; policy; notice to Commissioner of Labor; registry.

(1) For purposes of this section:

(a) Private employer means a sole proprietorship, a corporation, a partnership, an association, a limited liability company, or any other entity with one or more employees;

(b) Veteran means (i) a person who served full-time duty with military pay and allowances in the armed forces of the United States, except for training or for determining physical fitness, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), or (ii) the spouse of a veteran who (A) has a one hundred percent permanent disability as determined by the United States Department of Veterans Affairs or (B) was killed in hostile action; and

(c) Voluntary veterans preference employment policy means a private employer's voluntary preference for hiring and promoting a veteran over another equally qualified applicant or employee.

(2) A private employer may adopt a voluntary veterans preference employment policy. Such policy shall be in writing and applied uniformly to decisions regarding hiring and promotion.

(3) If a private employer offers a voluntary veterans preference employment policy, a veteran desiring to use such policy shall provide the private employer with a copy of the veteran's Department of Defense Form 214, also known as the DD Form 214, or its successor form. A spouse of a veteran desiring to use such preference shall provide the private employer with a copy of the veteran's Department of Defense Form 214 or its successor form, proof of marriage to the veteran, and either (a) a copy of the veteran's disability verification from the United States Department of Veterans Affairs demonstrating a one hundred percent permanent disability rating or (b) a copy of the veteran's Department of Defense Form 1300 or its successor form documenting that the veteran was killed in hostile action.

(4) If a private employer implements a voluntary veterans preference employment policy, it shall notify the Commissioner of Labor of such policy. The commissioner shall use the information to maintain a registry of the private employers that have a voluntary veterans preference employment policy in Nebraska.

(5) A voluntary veterans preference employment policy shall not be considered a violation of any state or local equal employment opportunity law including the Nebraska Fair Employment Practice Act.

Source: Laws 2015, LB272, § 1.
Effective date August 30, 2015.

Cross References

Nebraska Fair Employment Practice Act, see section 48-1125.

**ARTICLE 6
EMPLOYMENT SECURITY**

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| Section | |
| 48-602. | Terms, defined. |
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| 48-605. | Commissioner; salary. |
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Section

- 48-648.01. Employer; submit quarterly wage reports.
- 48-654. Employer's experience account; acquisition by transferee-employer; transfer; contribution rate.
- 48-660.01. Benefits; nonprofit organizations; combined tax; payments in lieu of contributions; election; notice; appeal; lien; liability.
- 48-663.01. Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; penalty; levy authorized; procedure; failure or refusal to honor levy; liability.
- 48-669. Change in benefit amounts; when applicable.

48-602 Terms, defined.

For purposes of the Employment Security Law, unless the context otherwise requires:

(1) Base period means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that if the individual is not monetarily eligible for unemployment benefits as determined pursuant to subdivision (5) of section 48-627 based upon wages paid during the first four of the five most recently completed calendar quarters, the department shall make a redetermination of monetary eligibility based upon an alternative base period which consists of the last four completed calendar quarters immediately preceding the first day of the claimant's benefit year;

(2) Benefits means the money payments payable to an individual with respect to his or her unemployment;

(3) Benefit year, with respect to any individual, means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in, within, or during that benefit year which includes the greater part of such week;

(4) Calendar quarter means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;

(5) Client means any individual, partnership, limited liability company, corporation, or other legally recognized entity that contracts with a professional employer organization to obtain professional employer services relating to worksite employees through a professional employer agreement;

(6) Combined tax means the employer liability consisting of contributions and the state unemployment insurance tax;

(7) Combined tax rate means the rate which is applied to wages to determine the combined taxes due;

(8) Commissioner means the Commissioner of Labor;

(9) Contribution rate means the percentage of the combined tax rate used to determine the contribution portion of the combined tax;

(10) Contributions means that portion of the combined tax based upon the contribution rate portion of the combined tax rate which is deposited in the state Unemployment Compensation Fund as required by sections 48-648 and 48-649;

(11) Department means the Department of Labor;

(12) Employment office means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

(13) Fund means the Unemployment Compensation Fund established by section 48-617 to which all contributions and payments in lieu of contributions required and from which all benefits provided shall be paid;

(14) Hospital means an institution which has been licensed, certified, or approved by the Department of Health and Human Services as a hospital;

(15) Institution of higher education means an institution which: (a) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; (b) is legally authorized in this state to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's degree or higher or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (d) is a public or other nonprofit institution; notwithstanding any of the foregoing provisions of this subdivision, all colleges and universities in this state are institutions of higher education for purposes of this section;

(16) Insured work means employment for employers;

(17) Leave of absence means any absence from work: (a) Mutually and voluntarily agreed to by the employer and the employee; (b) mutually and voluntarily agreed to between the employer and the employee's bargaining agent; or (c) to which the employee is entitled to as a matter of state or federal law;

(18) Paid vacation leave means a period of time while employed or following separation from employment in which the individual renders no services to the employer but is entitled to receive vacation pay equal to or exceeding his or her base weekly wage;

(19) Payments in lieu of contributions means the money payments to the Unemployment Compensation Fund required by sections 48-649, 48-652, 48-660.01, and 48-661;

(20) Professional employer agreement means a written professional employer services contract whereby:

(a) A professional employer organization agrees to provide payroll services, employee benefit administration, or personnel services for a majority of the employees providing services to the client at a client worksite;

(b) The agreement is intended to be ongoing rather than temporary in nature; and

(c) Employer responsibilities for worksite employees, including those of hiring, firing, and disciplining, are shared between the professional employer organization and the client by contract. The term professional employer agree-

ment shall not include a contract between a parent corporation, company, or other entity and a wholly owned subsidiary;

(21) Professional employer organization means any individual, partnership, limited liability company, corporation, or other legally recognized entity that enters into a professional employer agreement with a client or clients for a majority of a client's workforce at a client worksite. The term professional employer organization does not include an insurer as defined in section 44-103 or a temporary help firm;

(22) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(23) State unemployment insurance tax means that portion of the combined tax which is based upon the state unemployment insurance tax rate portion of the combined tax rate and which is deposited in the State Unemployment Insurance Trust Fund as required by sections 48-648 and 48-649;

(24) State unemployment insurance tax rate means the percentage of the combined tax rate used to determine the state unemployment insurance tax portion of the combined tax;

(25) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm;

(26) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

(27) Unemployed means an individual during any week in which the individual performs no service and with respect to which no wages are payable to the individual or any week of less than full-time work if the wages payable with respect to such week are less than the individual's weekly benefit amount, but does not include any individual on a leave of absence or on paid vacation leave. When an agreement between the employer and a bargaining unit representative does not allocate vacation pay allowance or pay in lieu of vacation to a specified period of time during a period of temporary layoff or plant shutdown, the payment by the employer or his or her designated representative will be deemed to be wages as defined in this section in the week or weeks the vacation is actually taken;

(28) Unemployment Trust Fund means the trust fund in the Treasury of the United States of America established under section 904 of the federal Social Security Act, 42 U.S.C. 1104, as such section existed on January 1, 2015, which receives credit from the state Unemployment Compensation Fund;

(29) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, means all remuneration for personal services, including commissions and bonuses, remuneration for personal services paid under a contract of hire, and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the commissioner. Wages includes tips which are received while performing services which constitute employment and which are included in a written statement furnished

to the employer pursuant to section 6053(a) of the Internal Revenue Code as defined in section 49-801.01.

With respect to services performed in employment in agricultural labor as is provided in subdivision (4)(c) of section 48-604, wages means cash remuneration and the cash value of commodities not intended for personal consumption by the worker and his or her immediate family for such services. With respect to services performed in employment in domestic service as is provided in subdivision (4)(d) of section 48-604, wages means cash remuneration for such services.

The term wages does not include:

(a) The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to, or on behalf of, an individual in employment or any of his or her dependents under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of (i) sickness or accident disability, except, in the case of payments made to an employee or any of his or her dependents, this subdivision (i) shall exclude from wages only payments which are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code as defined in section 49-801.01;

(c) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(d) Any payment made to, or on behalf of, an individual or his or her beneficiary (i) from or to a trust described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01 which is exempt from tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code as defined in section 49-801.01;

(e) Any payment made to, or on behalf of, an employee or his or her beneficiary (i) under a simplified employee pension as defined by the commissioner, (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise, (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner, (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan, or (v) under a cafeteria benefits plan;

(f) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business;

(g) Benefits paid under a supplemental unemployment benefit plan which satisfies the eight points set forth in Internal Revenue Service Revenue Ruling 56-249 as the ruling existed on January 1, 2015, and is in compliance with the standards set forth in Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the rulings existed on January 1, 2015; and

(h) Remuneration for service performed in the employ of any state in the exercise of his or her duties as a member of the Army National Guard or Air National Guard or in the employ of the United States of America as a member of any military reserve unit;

(30) Week means such period of seven consecutive days as the commissioner may by rule and regulation prescribe;

(31) Week of unemployment with respect to any individual means any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount;

(32) Wholly owned subsidiary means a corporation, company, or other entity which has eighty percent or more of its outstanding voting stock or membership owned or controlled, directly or indirectly, by the parent entity; and

(33) Worksite employee has the same meaning as the term covered employee in section 48-2702.

Source: Laws 1937, c. 108, § 2, p. 370; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 373; C.S.Supp.,1941, § 48-702; Laws 1943, c. 111, §§ 1, 2, p. 390; R.S.1943, § 48-602; Laws 1947, c. 175, § 1, p. 563; Laws 1949, c. 163, § 2, p. 417; Laws 1951, c. 156, § 1, p. 626; Laws 1953, c. 167, § 2, p. 520; Laws 1961, c. 235, § 3, p. 695; Laws 1961, c. 238, § 1, p. 701; Laws 1971, LB 651, § 1; Laws 1972, LB 1392, § 1; Laws 1977, LB 509, § 1; Laws 1979, LB 581, § 1; Laws 1980, LB 800, § 1; Laws 1983, LB 248, § 1; Laws 1985, LB 339, § 2; Laws 1986, LB 950, § 1; Laws 1988, LB 1033, § 1; Laws 1992, LB 879, § 1; Laws 1993, LB 121, § 289; Laws 1994, LB 286, § 1; Laws 1994, LB 1337, § 2; Laws 1995, LB 77, § 1; Laws 1995, LB 574, § 51; Laws 1996, LB 1044, § 274; Laws 1999, LB 168, § 1; Laws 1999, LB 608, § 1; Laws 2001, LB 192, § 3; Laws 2002, LB 921, § 1; Laws 2005, LB 484, § 3; Laws 2005, LB 739, § 2; Laws 2007, LB265, § 4; Laws 2007, LB296, § 216; Laws 2010, LB579, § 20; Laws 2010, LB1020, § 2; Laws 2015, LB271, § 1.

Effective date August 30, 2015.

48-603 Employer, defined.

As used in the Employment Security Law, unless the context clearly requires otherwise, employer shall mean:

(1) Any individual or type of organization, including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a

deceased person, which for some portion of a day but not necessarily simultaneously in each of twenty different calendar weeks, whether or not such weeks are or were consecutive, within either the current or preceding calendar year, and for the purpose of this definition, if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week, has or had in employment one or more individuals, irrespective of whether the same individuals are or were employed in each such day; all individuals performing services for any employer of any person in this state, who maintains two or more separate establishments within this state, shall be deemed to be employed by a single employer; any artifice or device, including any contract or subcontract, by an employer for the performance of work, which is a part of such employer's usual trade, occupation, profession, or business, entered into for the purpose or with the intent of evading the application of this section to such employer, is hereby prohibited and declared to be unlawful;

(2) Any employer of any person in this state who in any calendar quarter in either the current or preceding calendar year has paid wages for employment in the total sum of fifteen hundred dollars or more;

(3) Any individual or employer of any person in this state which acquired the organization, trade, or business, or substantially all the assets thereof, of another employer which, at the time of such acquisition, was an employer subject to the Employment Security Law;

(4) Any employer of any person in this state, which acquired the organization, trade, or business, or substantially all the assets thereof, of another employer of any person in this state, not an employer subject to such law, and which, if subsequent to such acquisition it were treated as a single unit with such other employer, would be an employer under subdivision (1) or (2) of this section;

(5) Any employer of any person in this state which, having become an employer under any provision of the Employment Security Law and which has not, under section 48-661, ceased to be an employer subject to such law;

(6) For the effective period of its election pursuant to section 48-661, any other employer of any person in this state who has elected to become fully subject to the Employment Security Law;

(7) Any employer of any person in this state not an employer by reason of any other subdivision of this section (a) for which services in employment are or were performed with respect to which such employer is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or (b) which, as a condition for approval of the Employment Security Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an employer under the Employment Security Law;

(8) The state or any political subdivision thereof and any instrumentality of any one or more of the foregoing;

(9) Any organization for which service in employment as defined in subdivision (4)(b) of section 48-604 is performed;

(10) Any individual or employing unit for which service in employment as defined in subdivision (4)(c) of section 48-604 is performed;

(11) Any individual or employing unit for which service in employment as defined in subdivision (4)(d) of section 48-604 is performed; and

(12)(a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under subdivision (1) or (10) of this section, the wages earned or the employment of an employee performing domestic service shall not be taken into account; and

(b) In determining whether or not an employing unit for which agricultural labor is also performed is an employer under subdivision (11) of this section, the wages earned or the employment of an employee performing services in agricultural labor shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purposes of subdivision (1) of this section.

Source: Laws 1937, c. 108, § 2, p. 371; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 374; C.S.Supp.,1941, § 48-702; R.S.1943, § 48-603; Laws 1945, c. 114, § 1, p. 369; Laws 1955, c. 190, § 1, p. 538; Laws 1971, LB 651, § 2; Laws 1977, LB 509, § 2; Laws 1985, LB 339, § 3; Laws 1993, LB 121, § 290; Laws 2015, LB271, § 2.
Effective date August 30, 2015.

48-603.01 Indian tribes; applicability of Employment Security Law.

(1) For purposes of the Employment Security Law, unless the context otherwise requires, the term employer shall include any Indian tribe for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed.

(2) The term employment shall include service performed in the employ of an Indian tribe, as defined in 26 U.S.C. 3306(u), as such section existed on January 1, 2015, if such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of 26 U.S.C. 3306(c)(7), as such section existed on January 1, 2015, and is not otherwise excluded from employment under the Employment Security Law. For purposes of this section, the exclusions from employment in subdivisions (6)(f) and (6)(g) of section 48-604 shall be applicable to services performed in the employment of an Indian tribe.

(3) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other covered employment under the Employment Security Law. Subdivision (8) of section 48-628 shall apply to services performed in an educational institution or educational service agency owned or operated by an Indian tribe.

(4)(a) Indian tribes or tribal units, subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to the Employment Security Law, shall pay combined tax under the same terms and conditions as all other subject employers, unless they elect to make payments in lieu of contributions equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(b) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in subdivision (7) of section 48-649 pertaining to state and local governments subject to the Employment Security Law. Indian tribes shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

(c) Except as provided in subsection (7) of this section, Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(d) At the discretion of the commissioner, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election to:

(i) Execute and file with the commissioner a surety bond approved by the commissioner; or

(ii) Deposit with the commissioner money or securities on the same basis as other employers with the same election option.

(5)(a)(i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection (4) of this section, for the following tax year unless payment in full is received before combined tax rates for the next tax year are computed.

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision (5)(a)(i) of this section, shall have such option reinstated if, after a period of one year, all combined taxes have been paid timely and no combined tax, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(b)(i) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted will cause services performed for such tribe to not be treated as employment for purposes of subsection (2) of this section.

(ii) The commissioner may determine that any Indian tribe that loses coverage under subdivision (5)(b)(i) of this section may have services performed for such tribe again included as employment for purposes of subsection (2) of this section if all contributions, payments in lieu of contributions, penalties, and interest have been paid.

(6) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed timeframe:

(a) Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act, as the act existed on January 1, 2015;

(b) Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(c) Could cause the Indian tribe to be excepted from the definition of employer, as provided in subsection (1) of this section, and services in the employ of the Indian tribe, as provided in subsection (2) of this section, to be excepted from employment.

(7) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

(8) If an Indian tribe fails to make payments required under this section, including assessments of interest and penalty, within ninety days after a final notice of delinquency, the commissioner shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

Source: Laws 2001, LB 192, § 2; Laws 2003, LB 199, § 1; Laws 2005, LB 739, § 4; Laws 2015, LB271, § 3.
Effective date August 30, 2015.

48-605 Commissioner; salary.

The commissioner, for his or her services with respect to the administration of the Employment Security Law, shall receive the salary of the commissioner as set out in section 81-103.

Source: Laws 1937, c. 108, § 10, p. 389; Laws 1939, c. 56, § 15, p. 254; Laws 1941, c. 94, § 15, p. 401; C.S.Supp.,1941, § 48-710; R.S. 1943, § 48-605; Laws 1947, c. 175, § 3, p. 572; Laws 1949, c. 163, § 3, p. 420; Laws 1961, c. 239, § 1, p. 712; Laws 1984, LB 747, § 1; Laws 1985, LB 339, § 5; Laws 2015, LB271, § 4.
Effective date August 30, 2015.

48-625 Benefits; weekly payment; how computed.

(1) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-fourth of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-fourth of such benefit amount, he or she shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. In the event there is any deduction from such individual's weekly benefit amount because of earned wages pursuant to this subsection or as a result of the application of subdivision (5) of section 48-628, the resulting benefit payment, if not an exact dollar amount, shall be computed to the next lower dollar amount.

Any amount of unemployment compensation payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

No deduction shall be made for any supplemental payments received by a claimant under the provisions of subsection (b) of section 408 of Title IV of the Veterans Readjustment Assistance Act of 1952.

The percentage of benefits and the percentage of extended benefits which are federally funded may be adjusted in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177.

(2) Vacation leave pay including that received in a lump sum or upon separation from employment shall be prorated in an amount reasonably attributable to each week claimed and considered payable with respect to such week.

Source: Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 234; Laws 1941, c. 94, § 2, p. 382; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-625; Laws 1949, c. 163, § 8, p. 424; Laws 1953, c. 167, § 5, p. 531; Laws 1980, LB 800, § 2; Laws 1982, LB 801,

§ 1; Laws 1983, LB 248, § 3; Laws 1986, LB 950, § 2; Laws 1987, LB 461, § 1; Laws 1995, LB 1, § 6; Laws 1999, LB 608, § 3; Laws 2005, LB 739, § 8; Laws 2015, LB271, § 5.
Effective date August 30, 2015.

48-648 Combined tax; employer; payment; rules and regulations governing; related corporations or limited liability companies; professional employer organization.

(1) Combined tax shall accrue and become payable by each employer not otherwise entitled to make payments in lieu of contributions for each calendar year in which he or she is subject to the Employment Security Law, with respect to wages for employment. Such combined tax shall become due and be paid by each employer to the commissioner for the State Unemployment Insurance Trust Fund and the Unemployment Trust Fund in such manner and at such times as the commissioner may, by rule and regulation, prescribe and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. The commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. In the payment of any combined tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. If the combined tax due for any reporting period is less than five dollars, the employer need not remit the combined tax.

(2) If two or more related corporations or limited liability companies concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations or limited liability companies, each such corporation or limited liability company shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations or limited liability companies. An employee of a wholly owned subsidiary shall be considered to be concurrently employed by the parent corporation, company, or other entity and the wholly owned subsidiary whether or not both companies separately provide remuneration.

(3) The professional employer organization shall report and pay combined tax, penalties, and interest owed upon wages earned by worksite employees under the client's employer account number using the client's combined tax rate. The client is liable for the payment of unpaid combined tax, penalties, and interest owed upon wages paid to worksite employees, and the worksite employees shall be considered employees of the client for purposes of the Employment Security Law.

Source: Laws 1937, c. 108, § 7, p. 382; Laws 1941, c. 94, § 5, p. 390; C.S.Supp.,1941, § 48-707; R.S.1943, § 48-648; Laws 1971, LB 651, § 8; Laws 1981, LB 279, § 1; Laws 1985, LB 339, § 33; Laws 1992, LB 879, § 2; Laws 1994, LB 1337, § 7; Laws 1998,

LB 834, § 1; Laws 2002, LB 921, § 3; Laws 2005, LB 484, § 7;
Laws 2009, LB631, § 5; Laws 2015, LB271, § 6.
Effective date August 30, 2015.

48-648.01 Employer; submit quarterly wage reports.

The Commissioner of Labor may require by rule and regulation that each employer subject to the Employment Security Law shall submit to the commissioner quarterly wage reports on such forms and in such manner as the commissioner may prescribe. The commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work a hardship on the employer. The quarterly wage reports shall be used by the commissioner to make monetary determinations of claims for benefits.

Source: Laws 1985, LB 343, § 2; Laws 1986, LB 950, § 6; Laws 2005, LB 484, § 8; Laws 2009, LB631, § 6; Laws 2015, LB271, § 7.
Effective date August 30, 2015.

48-654 Employer's experience account; acquisition by transferee-employer; transfer; contribution rate.

Subject to section 48-654.01, any employer that acquires the organization, trade, or business, or substantially all the assets thereof, of another employer shall immediately notify the commissioner thereof, and may, pursuant to rules and regulations prescribed by the commissioner, assume the position of such employer with respect to the resources and liabilities of such employer's experience account as if no change with respect to such employer's experience account has occurred. The commissioner may provide by rule and regulation for partial transfers of experience accounts, except that such partial transfers of accounts shall be construed to allow computation and fixing of contribution rates only where an employer has transferred at any time a definable and segregable portion of his or her payroll and business to a transferee-employer. For an acquisition which occurs during either of the first two calendar quarters of a calendar year or during the fourth quarter of the preceding calendar year, a new rate of contributions, payable by the transferee-employer with respect to wages paid by him or her after midnight of the last day of the calendar quarter in which such acquisition occurs and prior to midnight of the following September 30, shall be computed in accordance with this section. For the purpose of computing such new rate of contributions, the computation date with respect to any such acquisition shall be September 30 of the preceding calendar year and the term payroll shall mean the total amount of wages by which contributions to the transferee's account and to the transferor's account were measured for four calendar quarters ending September 30 preceding the computation date.

Source: Laws 1937, c. 108, § 7, p. 385; Laws 1941, c. 94, § 5, p. 394; C.S.Supp.,1941, § 48-707; R.S.1943, § 48-654; Laws 1945, c. 115, § 6, p. 386; Laws 1947, c. 175, § 13, p. 582; Laws 1953, c. 169, § 1, p. 543; Laws 1985, LB 336, § 1; Laws 1985, LB 339,

§ 38; Laws 2005, LB 484, § 10; Laws 2009, LB631, § 9; Laws 2015, LB271, § 8.
Effective date August 30, 2015.

48-660.01 Benefits; nonprofit organizations; combined tax; payments in lieu of contributions; election; notice; appeal; lien; liability.

(1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with this section. For the purpose of this section, a nonprofit organization is an organization, or group of organizations, described in subdivision (9) of section 48-603.

(2)(a) Any nonprofit organization which is, or becomes, subject to the Employment Security Law shall pay combined tax under sections 48-648 to 48-661 unless it elects, in accordance with this subsection, to pay to the commissioner for the unemployment fund an amount, equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(b) Any nonprofit organization which is, or becomes, subject to the Employment Security Law may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(c) Any nonprofit organization which makes an election in accordance with subdivision (b) of this subsection shall continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(d) Any nonprofit organization which has been paying combined tax under the Employment Security Law may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(e) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(f) The commissioner, in accordance with such rules and regulations as he or she may adopt and promulgate, shall notify each nonprofit organization of any determination which he or she may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to redetermination and appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) Payments in lieu of contributions shall be made in accordance with this subsection as follows:

(a) At the end of each calendar quarter, or at the end of any other period as determined by the commissioner, the commissioner shall bill each nonprofit

organization, or group of such organizations, which has elected to make payment in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization;

(b) Payment of any bill rendered under subdivision (a) of this subsection shall be made not later than thirty days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it unless there has been an application for review and redetermination in accordance with subdivision (d) of this subsection;

(c) Payments made by any nonprofit organization under this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization;

(d) The amount due specified in any bill from the commissioner shall be conclusive on the organization unless, not later than thirty days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the commissioner setting forth the grounds for such application. The commissioner shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless the organization appeals the redetermination, and the appeal shall be in accordance with the Administrative Procedure Act; and

(e) Past-due payments of amounts in lieu of contributions shall be subject to the same interest that, pursuant to section 48-655, applies to past-due contributions, and the commissioner may file a lien against such nonprofit organization in accordance with the Uniform State Tax Lien Registration and Enforcement Act. Such liens shall set forth the amount of payments in lieu of contributions and interest in default and shall be enforced as provided in the Uniform State Tax Lien Registration and Enforcement Act.

(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under subsection (3) of this section, the commissioner may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(5) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with section 48-652.

Source: Laws 1971, LB 651, § 11; Laws 1985, LB 339, § 42; Laws 1988, LB 352, § 89; Laws 1994, LB 1337, § 19; Laws 1999, LB 165, § 2; Laws 2015, LB271, § 9.
Effective date August 30, 2015.

Cross References

Administrative Procedure Act, see section 84-920.

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

48-663.01 Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; penalty; levy authorized; procedure; failure or refusal to honor levy; liability.

(1)(a) Notwithstanding any other provision of this section, or of section 48-627 or 48-663, an individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her or who willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, shall forfeit all or part of his or her benefit rights, as determined by a deputy, with respect to uncharged wage credits accrued prior to the date of such failure or to the date of such falsifications.

(b) In addition to any benefits which he or she may be required to repay pursuant to subdivision (1)(a) of this section, if an overpayment is established pursuant to this section on or after October 1, 2013, an individual shall be required to pay to the department a penalty equal to fifteen percent of the amount of benefits received as a result of such willful failure to disclose or falsification. All amounts collected pursuant to this subdivision shall be remitted for credit to the Unemployment Compensation Fund.

(c) An appeal may be taken from any determination made pursuant to subdivision (1)(a) of this section in the manner provided in section 48-634.

(2)(a) If any person liable to repay an overpayment of unemployment benefits resulting from a determination under subdivision (1)(a) of this section and the penalty required under subdivision (1)(b) of this section fails or refuses to repay such overpayment and any penalty assessed within twelve months after the date the overpayment determination becomes final, the commissioner may issue a levy on salary, wages, or other regular payments due to or received by such person and such levy shall be continuous from the date the levy is served until the amount of the levy is satisfied. Notice of the levy shall be mailed to the person whose salary, wages, or other regular payment is levied upon at his or her last-known address not later than the date that the levy is served. Exemptions or limitations on the amount of salary, wages, or other regular payment that can be garnished or levied upon by a judgment creditor shall apply to levies made pursuant to this section. Appeal of a levy may be made in the manner provided in section 48-634, but such appeal shall not act as a stay of the levy.

(b) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the person liable to repay the overpayment that are under the control of the person upon whom the levy is served at the time of service and thereafter.

Source: Laws 1949, c. 163, § 16(2), p. 432; Laws 2007, LB265, § 11; Laws 2012, LB1058, § 9; Laws 2015, LB271, § 10.
Effective date August 30, 2015.

48-669 Change in benefit amounts; when applicable.

Any change in the weekly benefit amounts prescribed in section 48-624 or any change in the maximum annual benefit amount prescribed in section 48-626 shall be applicable for the calendar year following the annual determination made pursuant to section 48-121.02.

Source: Laws 1949, c. 163, § 18, p. 435; Laws 1951, c. 157, § 2, p. 631; Laws 1953, c. 168, § 2, p. 542; Laws 1955, c. 190, § 11, p. 551; Laws 1957, c. 209, § 3, p. 741; Laws 1959, c. 229, § 3, p. 803; Laws 1961, c. 235, § 4, p. 698; Laws 1963, c. 291, § 4, p. 874; Laws 1965, c. 286, § 2, p. 820; Laws 1967, c. 299, § 2, p. 815; Laws 1969, c. 401, § 2, p. 1394; Laws 1971, LB 651, § 14; Laws 1972, LB 1391, § 2; Laws 1973, LB 333, § 2; Laws 1974, LB 775, § 2; Laws 1975, LB 475, § 2; Laws 1977, LB 337, § 2; Laws 1979, LB 183, § 2; Laws 1983, LB 524, § 2; Laws 1985, LB 216, § 2; Laws 1987, LB 446, § 3; Laws 1994, LB 286, § 4; Laws 1998, LB 225, § 4; Laws 2005, LB 739, § 13; Laws 2015, LB271, § 11.

Effective date August 30, 2015.

ARTICLE 11

NEBRASKA FAIR EMPLOYMENT PRACTICE ACT

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| Section 48-1102. | Terms, defined. |
| 48-1107.01. | Unlawful employment practice for covered entity. |
| 48-1107.02. | Qualified individual with a disability; individual who is pregnant, who has given birth, or who has a related medical condition; discrimination, defined. |
| 48-1109. | Repealed. Laws 2015, LB 627, § 7. |
| 48-1111. | Different standards of compensation, conditions, or privileges of employment; lawful employment practices; effect of pregnancy and related medical conditions. |
| 48-1117. | Commission; powers; duties; enumerated. |

48-1102 Terms, defined.

For purposes of the Nebraska Fair Employment Practice Act, unless the context otherwise requires:

(1) Person shall include one or more individuals, labor unions, partnerships, limited liability companies, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers;

(2) Employer shall mean a person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such a person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act regardless of the number of employees and shall include the State of Nebraska, governmental agencies, and political subdivisions, but such term shall not include (a) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe or (b) a bona fide private membership club, other than a labor organization, which is exempt from taxation under section 501(c) of the Internal Revenue Code;

(3) Labor organization shall mean any organization which exists wholly or in part for one or more of the following purposes: Collective bargaining; dealing with employers concerning grievances, terms, or conditions of employment; or mutual aid or protection in relation to employment;

(4) Employment agency shall mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and shall include an agent of such a person but shall not include an agency of the United States, except that such term shall include the United States Employment Service and the system of state and local employment services receiving federal assistance;

(5) Covered entity shall mean an employer, an employment agency, a labor organization, or a joint labor-management committee;

(6) Privileges of employment shall mean terms and conditions of any employer-employee relationship, opportunities for advancement of employees, and plant conveniences;

(7) Employee shall mean an individual employed by an employer;

(8) Commission shall mean the Equal Opportunity Commission;

(9) Disability shall mean (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, or (c) being regarded as having such an impairment. Disability shall not include homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender-identity disorders not resulting in physical impairments, other sexual behavior disorders, problem gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs;

(10)(a) Qualified individual with a disability shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;

(b) Qualified individual with a disability shall not include any employee or applicant who is currently engaged in the illegal use of drugs when the covered entity acts on the basis of such use; and

(c) Nothing in this subdivision shall be construed to exclude as a qualified individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program or otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use but is not engaging in such use;

(11) Reasonable accommodation, with respect to disability, shall include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of

equipment or devices, appropriate adjustment or modification of examinations, training manuals, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. Reasonable accommodation, with respect to pregnancy, childbirth, or related medical conditions, shall include acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light-duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for breast-feeding or expressing breast milk. Reasonable accommodation shall not include accommodations which the covered entity can demonstrate require significant difficulty or expense thereby posing an undue hardship upon the covered entity. Factors to be considered in determining whether an accommodation would pose an undue hardship shall include:

(a) The nature and the cost of the accommodation needed under the Nebraska Fair Employment Practice Act;

(b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, and the number, type, and location of its facilities; and

(d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity;

(12) Marital status shall mean the status of a person whether married or single;

(13) Because of sex or on the basis of sex shall include, but not be limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions;

(14) Harass because of sex shall include making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature if (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment;

(15) Unlawful under federal law or the laws of this state shall mean acting contrary to or in defiance of the law or disobeying or disregarding the law;

(16) Drug shall mean a controlled substance as defined in section 28-401;

(17) Illegal use of drugs shall mean the use of drugs, the possession or distribution of which is unlawful under the Uniform Controlled Substances Act, but shall not include the use of a drug taken under supervision by a licensed health care professional or any other use authorized by the Uniform Controlled Substances Act or other provisions of state law; and

(18) Individual who is pregnant, who has given birth, or who has a related medical condition shall mean an individual with a known limitation who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds, desires, or may be temporarily assigned to. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

Source: Laws 1965, c. 276, § 2, p. 783; Laws 1967, c. 306, § 1, p. 829; Laws 1969, c. 120, § 21, p. 551; Laws 1973, LB 265, § 2; Laws 1973, LB 266, § 2; Laws 1977, LB 161, § 1; Laws 1979, LB 67, § 1; Laws 1983, LB 626, § 74; Laws 1984, LB 14A, § 1; Laws 1985, LB 324, § 1; Laws 1986, LB 1108, § 1; Laws 1989, LB 176, § 1; Laws 1993, LB 121, § 297; Laws 1993, LB 124, § 1; Laws 1993, LB 360, § 3; Laws 2004, LB 1083, § 98; Laws 2015, LB627, § 1.

Effective date August 30, 2015.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

Uniform Controlled Substances Act, see section 28-401.01.

48-1107.01 Unlawful employment practice for covered entity.

It shall be an unlawful employment practice for a covered entity to:

(1) Discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment; or

(2) Discriminate against an individual who is pregnant, who has given birth, or who has a related medical condition in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Source: Laws 1993, LB 360, § 5; Laws 2015, LB627, § 2.

Effective date August 30, 2015.

48-1107.02 Qualified individual with a disability; individual who is pregnant, who has given birth, or who has a related medical condition; discrimination, defined.

(1) When referring to a qualified individual with a disability, discrimination shall include:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;

(b) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified individual with a disability to discrimination in the application or employment process, including a relationship with an employment agency, a labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;

(c) Utilizing standards, criteria, or methods of administration (i) that have the effect of discrimination on the basis of disability or (ii) that perpetuate the discrimination against others who are subject to common administrative control;

(d) Excluding or otherwise denying equal jobs or benefits to a qualified individual with a disability because of the known disability of an individual with whom the qualified individual with a disability is known to have a relationship or association;

(e) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

(f) Denying employment opportunities to a job applicant or employee who is otherwise a qualified individual with a disability if the denial is based upon the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(g) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(h) Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant except when such skills are the factors that the test purports to measure;

(i) Conducting a medical examination or making inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability, except that:

(i) A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions;

(ii) A test to determine the illegal use of drugs shall not be considered a medical examination; and

(iii) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination if:

(A) All entering employees are subjected to such an examination regardless of disability;

(B) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that (I) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, (II) first-aid and safety personnel may be informed, when appropriate, if the disability might

require emergency treatment, (III) government officials investigating compliance with the Nebraska Fair Employment Practice Act shall be provided relevant information on request, and (IV) information shall be made available in accordance with the Nebraska Workers' Compensation Act; and

(C) The results of the examination are used only in a manner not inconsistent with the Nebraska Fair Employment Practice Act; and

(j) Requiring a medical examination or making inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity. A test to determine the illegal use of drugs shall not be considered a medical examination. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the worksite and may make inquiries into the ability of an employee to perform job-related functions if the information obtained regarding the medical condition or history of the employee is subject to the requirements in subdivisions (1)(i)(iii)(B) and (C) of this section.

(2) When referring to an individual who is pregnant, who has given birth, or who has a related medical condition, discrimination shall include:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the pregnancy, childbirth, or related medical conditions of the applicant or employee;

(b) Participating in a contractual or other arrangement or relationship that has the effect of subjecting an individual who is pregnant, who has given birth, or who has a related medical condition to discrimination in the application or employment process, including a relationship with an employment agency, a labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;

(c) Utilizing standards, criteria, or methods of administration (i) that have the effect of discrimination on the basis of pregnancy, childbirth, or related medical conditions or (ii) that perpetuate the discrimination against others who are subject to common administrative control;

(d) Not making reasonable accommodations to the known physical limitations of an individual who is pregnant, who has given birth, or who has a related medical condition and who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

(e) Denying employment opportunities to a job applicant or employee who is pregnant, who has given birth, or who has a related medical condition if the denial is based upon the need of such covered entity to make reasonable accommodation to the physical limitations due to the pregnancy, childbirth, or related medical conditions of the employee or applicant;

(f) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual or a class of individuals who are pregnant, who have given birth, or who have a related medical condition unless the standard, test, or other selection criteria, as used by the covered

entity, is shown to be job-related for the position in question and is consistent with business necessity;

(g) Conducting a medical examination or making inquiries of a job applicant as to whether the applicant is pregnant, has given birth, or has a related medical condition, except that:

(i) A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions;

(ii) A test to determine the illegal use of drugs shall not be considered a medical examination; and

(iii) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination if:

(A) All entering employees are subjected to such an examination;

(B) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that (I) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, (II) first-aid and safety personnel may be informed, when appropriate, if the pregnancy, childbirth, or related medical conditions might require emergency treatment, (III) government officials investigating compliance with the Nebraska Fair Employment Practice Act shall be provided relevant information on request, and (IV) information shall be made available in accordance with the Nebraska Workers' Compensation Act; and

(C) The results of the examination are used only in a manner not inconsistent with the Nebraska Fair Employment Practice Act;

(h) Requiring a medical examination or making inquiries of an employee as to whether the employee is pregnant, has given birth, or has a related medical condition unless the examination or inquiry is shown to be job-related and consistent with business necessity. A test to determine the illegal use of drugs shall not be considered a medical examination. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the worksite and may make inquiries into the ability of an employee to perform job-related functions if the information obtained regarding the medical condition or history of the employee is subject to the requirements in subdivisions (2)(g)(iii)(B) and (C) of this section;

(i) Requiring an employee to take leave under any leave law or policy of the covered entity if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee; and

(j) Taking adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.

Source: Laws 1993, LB 360, § 6; Laws 2015, LB627, § 3.
Effective date August 30, 2015.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-1109 Repealed. Laws 2015, LB 627, § 7.**48-1111 Different standards of compensation, conditions, or privileges of employment; lawful employment practices; effect of pregnancy and related medical conditions.**

(1) Except as otherwise provided in the Nebraska Fair Employment Practice Act, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if such differences are not the result of an intention to discriminate because of race, color, religion, sex, disability, marital status, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test if such test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, disability, marital status, or national origin.

It shall not be an unlawful employment practice for a covered entity to deny privileges of employment to an individual with a disability when the qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability:

(a) Have been shown to be job-related and consistent with business necessity and such performance cannot be accomplished by reasonable accommodation, as required by the Nebraska Fair Employment Practice Act and the federal Americans with Disabilities Act of 1990; or

(b) Include a requirement that an individual shall not pose a direct threat, involving a significant risk to the health or safety of other individuals in the workplace, that cannot be eliminated by reasonable accommodation.

It shall not be an unlawful employment practice to refuse employment based on a policy of not employing both husband and wife if such policy is equally applied to both sexes.

(2) Except as otherwise provided in the Nebraska Fair Employment Practice Act, women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of employee benefits, as other persons not so affected but similar in their ability or inability to work, and nothing in this section shall be interpreted to provide otherwise.

This section shall not require an employer to provide employee benefits for abortion except when medical complications have arisen from an abortion.

Nothing in this section shall preclude an employer from providing employee benefits for abortion under fringe benefit programs or otherwise affect bargaining agreements in regard to abortion.

Source: Laws 1965, c. 276, § 11, p. 787; Laws 1973, LB 266, § 8; Laws 1977, LB 161, § 7; Laws 1984, LB 14A, § 2; Laws 1993, LB 360, § 11; Laws 2015, LB627, § 4.
Effective date August 30, 2015.

48-1117 Commission; powers; duties; enumerated.

The commission shall have the following powers and duties:

(1) To receive, investigate, and pass upon charges of unlawful employment practices anywhere in the state;

(2) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, and take the testimony of any person under oath and, in connection therewith, to require the production for examination of any books and papers relevant to any allegation of unlawful employment practice pending before the commission. The commission may make rules as to the issuance of subpoenas, subject to the approval by a constitutional majority of the elected members of the Legislature;

(3) To cooperate with the federal government and with local agencies to effectuate the purposes of the Nebraska Fair Employment Practice Act, including the sharing of information possessed by the commission on a case that has also been filed with the federal government or local agencies if both the employer and complainant have been notified of the filing;

(4) To attempt to eliminate unfair employment practices by means of conference, mediation, conciliation, arbitration, and persuasion;

(5) To require that every employer, employment agency, and labor organization subject to the act shall (a) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (b) preserve such records for such periods, and (c) make such reports therefrom, as the commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of the act or the regulations or orders thereunder. The commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to the act which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of the act, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and to furnish to the commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may either apply to the commission for an exemption from the application of such regulation or order or bring a civil action in the district court for the district where such records are kept. If the commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the commission or the court, as the case may be, may grant appropriate relief;

(6) To report, not less than once every two years, to the Clerk of the Legislature and the Governor, on the hearings it has conducted and the decisions it has rendered, the other work performed by it to carry out the purposes of the act, and to make recommendations for such further legislation concerning abuses and discrimination because of race, color, religion, sex, disability, marital status, or national origin, as may be desirable. The report shall also include the number of complaints filed under the act alleging a violation of subdivision (2) of section 48-1107.01 and the resolution of such

complaints. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of the report required by this subdivision by making a request for it to the chairperson of the commission; and

(7) To adopt and promulgate rules and regulations necessary to carry out the duties prescribed in the act.

Source: Laws 1965, c. 276, § 17, p. 790; Laws 1973, LB 266, § 11; Laws 1977, LB 161, § 11; Laws 1979, LB 322, § 18; Laws 1981, LB 545, § 11; Laws 1984, LB 14A, § 3; Laws 1993, LB 124, § 3; Laws 1993, LB 360, § 15; Laws 2012, LB782, § 63; Laws 2015, LB627, § 5.

Effective date August 30, 2015.

ARTICLE 12

WAGES

(a) MINIMUM WAGES

Section

48-1203. Wages; minimum rate.

(a) MINIMUM WAGES

48-1203 Wages; minimum rate.

(1) Except as otherwise provided in this section and section 48-1203.01, every employer shall pay to each of his or her employees a minimum wage of:

(a) Seven dollars and twenty-five cents per hour through December 31, 2014;

(b) Eight dollars per hour on and after January 1, 2015, through December 31, 2015; and

(c) Nine dollars per hour on and after January 1, 2016.

(2) For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops, porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars and thirteen cents per hour, plus all gratuities given to them for services rendered. The sum of wages and gratuities received by each person compensated by way of gratuities shall equal or exceed the minimum wage rate provided in subsection (1) of this section. In determining whether or not the individual is compensated by way of gratuities, the burden of proof shall be upon the employer.

(3) Any employer employing student-learners as part of a bona fide vocational training program shall pay such student-learners' wages at a rate of at least seventy-five percent of the minimum wage rate which would otherwise be applicable.

Source: Laws 1967, c. 285, § 3, p. 775; Laws 1969, c. 408, § 2, p. 1413; Laws 1973, LB 343, § 2; Laws 1987, LB 474, § 1; Laws 1989, LB 412, § 1; Laws 1991, LB 297, § 2; Laws 1997, LB 569, § 1; Laws 2007, LB265, § 22; Initiative Law 2014, No. 425, § 1.

ARTICLE 14

DEFERRED COMPENSATION

Section

48-1401. Political subdivisions; exception; deferred compensation plan; provisions; investment.

48-1401 Political subdivisions; exception; deferred compensation plan; provisions; investment.

(1) Any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, may enter into an agreement to defer a portion of any individual's compensation derived from such county, municipality, or other political subdivision, instrumentality, or agency to a future period in time pursuant to section 457 of the Internal Revenue Code. Such deferred compensation plan shall be voluntary and shall be available to all regular employees and elected officials.

(2) The compensation to be deferred may never exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such a plan.

(3) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries by the county, municipality, or other political subdivision, instrumentality, or agency until such time as payments are made under the terms of the deferred compensation plan.

(4) The county, municipality, or other political subdivision, instrumentality, or agency shall designate its treasurer or an equivalent official, including the State Treasurer, to be the custodian of the funds and securities of the deferred compensation plan.

(5) The county, municipality, or other political subdivision, instrumentality, or agency may invest the compensation to be deferred under an agreement in or with: (a) Annuities; (b) mutual funds; (c) banks; (d) savings and loan associations; (e) trust companies qualified to act as fiduciaries in this state; (f) an organization established for the purpose of administering public employee deferred compensation retirement plans and authorized to do business in the State of Nebraska; or (g) investment advisers as defined in the federal Investment Advisers Act of 1940.

(6) The deferred compensation program shall exist and serve in addition to, and shall not be a part of, any existing retirement or pension system provided for state, county, municipal, or other political subdivision, instrumentality, or agency employees, or any other benefit program.

(7) Any compensation deferred under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(8) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual.

(9) The state, county, municipality, or other political subdivision, instrumentality, or agency shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(10) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to

garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

(11) Nothing contained in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

(12) If a county has not established a deferred compensation plan pursuant to this section, each individual may require that the county enter into an agreement with the individual to defer a portion of such individual's compensation and place it under the management and supervision of the state deferred compensation plan created pursuant to sections 84-1504 to 84-1506. If such an agreement is made, the county shall designate the State Treasurer as custodian of such deferred compensation funds and such deferred compensation funds shall become a part of the trust administered by the Public Employees Retirement Board pursuant to sections 84-1504 to 84-1506.

(13) For purposes of this section, individual means (a) any person designated by the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, as a permanent part-time or full-time employee of the county, municipality, or other political subdivision, instrumentality, or agency and (b) a person under contract providing services to the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, and who has entered into a contract with such county, municipality, political subdivision, instrumentality, or agency to have compensation deferred prior to August 28, 1999.

Source: Laws 1977, LB 328, § 1; Laws 1997, LB 623, § 11; Laws 1999, LB 703, § 8; Laws 2012, LB916, § 18; Laws 2015, LB40, § 8. Effective date August 30, 2015.

ARTICLE 16

NEBRASKA WORKFORCE INVESTMENT ACT

(b) NEBRASKA WORKFORCE INVESTMENT ACT

Section

- 48-1616. Repealed. Laws 2015, LB 334, § 3.
- 48-1617. Repealed. Laws 2015, LB 334, § 3.
- 48-1618. Repealed. Laws 2015, LB 334, § 3.
- 48-1619. Repealed. Laws 2015, LB 334, § 3.
- 48-1620. Repealed. Laws 2015, LB 334, § 3.
- 48-1621. Repealed. Laws 2015, LB 334, § 3.
- 48-1622. Repealed. Laws 2015, LB 334, § 3.
- 48-1623. Repealed. Laws 2015, LB 334, § 3.
- 48-1624. Repealed. Laws 2015, LB 334, § 3.
- 48-1625. Repealed. Laws 2015, LB 334, § 3.
- 48-1626. Repealed. Laws 2015, LB 334, § 3.
- 48-1627. Repealed. Laws 2015, LB 334, § 3.

(b) NEBRASKA WORKFORCE INVESTMENT ACT

48-1616 Repealed. Laws 2015, LB 334, § 3.

48-1617 Repealed. Laws 2015, LB 334, § 3.

48-1618 Repealed. Laws 2015, LB 334, § 3.

48-1619 Repealed. Laws 2015, LB 334, § 3.

48-1620 Repealed. Laws 2015, LB 334, § 3.

48-1621 Repealed. Laws 2015, LB 334, § 3.

48-1622 Repealed. Laws 2015, LB 334, § 3.

48-1623 Repealed. Laws 2015, LB 334, § 3.

48-1624 Repealed. Laws 2015, LB 334, § 3.

48-1625 Repealed. Laws 2015, LB 334, § 3.

48-1626 Repealed. Laws 2015, LB 334, § 3.

48-1627 Repealed. Laws 2015, LB 334, § 3.

ARTICLE 28

NEBRASKA INNOVATION AND HIGH WAGE EMPLOYMENT ACT

Section

48-2801. Repealed. Laws 2015, LB 5, § 1.

48-2802. Repealed. Laws 2015, LB 5, § 1.

48-2803. Repealed. Laws 2015, LB 5, § 1.

48-2804. Repealed. Laws 2015, LB 5, § 1.

48-2805. Repealed. Laws 2015, LB 5, § 1.

48-2801 Repealed. Laws 2015, LB 5, § 1.

48-2802 Repealed. Laws 2015, LB 5, § 1.

48-2803 Repealed. Laws 2015, LB 5, § 1.

48-2804 Repealed. Laws 2015, LB 5, § 1.

48-2805 Repealed. Laws 2015, LB 5, § 1.



CHAPTER 49

LAW

Article.

8. Definitions, Construction, and Citation. 49-801.01.

ARTICLE 8

DEFINITIONS, CONSTRUCTION, AND CITATION

Section

49-801.01. Internal Revenue Code; reference.

49-801.01 Internal Revenue Code; reference.

Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-1106, 77-1108, 77-1109, 77-1117, 77-1119, 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-2902, 77-2906, 77-2908, 77-2909, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, 77-5903, 77-6302, and 77-6306, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on February 27, 2015.

Source: Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1; Laws 2008, LB896, § 1; Laws 2009, LB251, § 1; Laws 2010, LB879, § 2; Laws 2011, LB134, § 1; Laws 2011, LB389, § 11; Laws 2012, LB725, § 1; Laws 2012, LB1128, § 20; Laws 2013, LB24, § 1; Laws 2014, LB191, § 13; Laws 2014, LB739, § 1; Laws 2015, LB171, § 1.

Effective date February 27, 2015.



CHAPTER 50 LEGISLATURE

Article.

- 4. Legislative Council. 50-419.02 to 50-434.
- 12. Legislative Performance Audit Act. 50-1203 to 50-1215.

ARTICLE 4 LEGISLATIVE COUNCIL

Section

- 50-419.02. Legislative Fiscal Analyst; revenue volatility report; contents.
- 50-424. Health and Human Services Committee; implementation of child welfare reform recommendations; report.
- 50-428. Education Committee of the Legislature; study postsecondary education affordability.
- 50-429. Intergenerational Poverty Task Force; created; members.
- 50-430. Intergenerational Poverty Task Force; duties.
- 50-431. Intergenerational Poverty Task Force; powers.
- 50-432. Intergenerational Poverty Task Force; reports; contents.
- 50-433. Intergenerational Poverty Task Force; termination.
- 50-434. Committee on Justice Reinvestment Oversight; created; members; duties; report.

50-419.02 Legislative Fiscal Analyst; revenue volatility report; contents.

(1) On November 15, 2016, the Legislative Fiscal Analyst shall prepare and electronically submit a revenue volatility report to the Appropriations Committee of the Legislature. Every two years thereafter the Legislative Fiscal Analyst shall prepare a revenue volatility report to append to the annual report required under section 77-2715.01. The report shall also be posted on the Legislature's web site.

(2) The report shall:

- (a) Evaluate the tax base and the tax revenue volatility of revenue streams that provide funding for the state General Fund budget;
- (b) Identify federal funding included in the state budget and any projected changes in the amount or value of federal funding or potential areas in which federal funding could be lost;
- (c) Identify current and projected balances of the Cash Reserve Fund;
- (d) Analyze the adequacy of current and projected balances of the Cash Reserve Fund in relation to the tax revenue volatility and the risk of a reduction in the amount or value of federal funding or potential areas in which federal funding could be lost;
- (e) Include revenue projections for the ensuing two fiscal years included in the impending biennial budget; and
- (f) Contain any other recommendations that the Legislative Fiscal Analyst determines are necessary.

Source: Laws 2015, LB33, § 1.
Effective date August 30, 2015.

50-424 Health and Human Services Committee; implementation of child welfare reform recommendations; report.

On December 15 of 2012, 2013, and 2014, the Health and Human Services Committee of the Legislature shall provide a report to the Legislature, Governor, and Chief Justice of the Supreme Court with respect to the progress made by the Department of Health and Human Services implementing the recommendations of the committee contained in the final report of the study conducted by the committee pursuant to Legislative Resolution 37, One Hundred Second Legislature, First Session, 2011. The report submitted to the Legislature shall be submitted electronically. In order to facilitate such report, the department shall provide electronically to the committee by September 15 of 2012, 2013, and 2014 the reports required pursuant to sections 43-296, 43-534, 68-1207.01, 71-825, 71-1904, and 71-3407 and subdivision (6) of section 43-405.

Source: Laws 2012, LB1160, § 10; Laws 2013, LB222, § 18; Laws 2015, LB8, § 1.
Effective date August 30, 2015.

50-428 Education Committee of the Legislature; study postsecondary education affordability.

The Education Committee of the Legislature shall conduct a study of postsecondary education affordability in Nebraska and alternatives for supporting students and families with the cost. The committee shall electronically report its recommendations to the Clerk of the Legislature on or before December 31, 2015.

Source: Laws 2015, LB519, § 39.
Effective date August 30, 2015.

50-429 Intergenerational Poverty Task Force; created; members.

(1) The Intergenerational Poverty Task Force is created. The executive committee of the task force shall consist of the following voting members:

- (a) The chairperson of the Health and Human Services Committee of the Legislature;
- (b) The chairperson of the Appropriations Committee of the Legislature; and
- (c) Three at-large members appointed by the Executive Board of the Legislative Council.

The voting members of the executive committee shall choose a chairperson and vice-chairperson from among the voting members.

The chief executive officer of the Department of Health and Human Services or his or her designee, the Commissioner of Labor, and the Commissioner of Education shall be nonvoting, ex officio members of the executive committee of the task force.

(2) The remaining members of the task force shall be nonvoting members appointed by the executive committee of the task force through an application and selection process, representing (a) advocacy groups that focus on childhood poverty issues and education issues, (b) academic experts in childhood poverty or education, (c) service providers, (d) educational institutions, (e) workforce development agencies, and (f) experts in early childhood education. The mem-

bers appointed pursuant to this subsection shall constitute the advisory committee to the task force.

Source: Laws 2015, LB607, § 4.
Operative date May 28, 2015.

Note: Intergenerational Poverty Task Force terminates December 31, 2016.

50-430 Intergenerational Poverty Task Force; duties.

The Intergenerational Poverty Task Force shall, with respect to programs, including, but not limited to, the aid to dependent children program described in section 43-513, the federal Supplemental Nutrition Assistance Program established pursuant to 7 U.S.C. 2011 et seq., as such sections existed on January 1, 2015, the child care assistance program described in section 68-1206, and the Employment First program developed pursuant to the self-sufficiency contract described in sections 68-1719 to 68-1724 and rules and regulations of the Department of Health and Human Services:

(1) Share, examine, and analyze data and information regarding intergenerational poverty in the state with a primary focus on data and information regarding children who are at risk of continuing the cycle of poverty unless outside intervention is made and develop effective and efficient plans, programs, and recommendations to help such children escape the cycle of poverty;

(2) Encourage participation and input from academic experts, advocacy groups, nonprofit corporations, local governments, and faith-based institutions in exploring strategies and solutions to help children who are victims of intergenerational poverty escape the cycle of poverty;

(3) Study, evaluate, and report on the status and effectiveness of policies, procedures, and programs implemented by other states and by nongovernmental entities that address the needs of and that provide services to children affected by intergenerational poverty;

(4) Identify policies, procedures, and programs, including any lack of interagency data sharing, lack of policy coordination, or current federal requirements, that are impeding efforts to help children in the state affected by intergenerational poverty escape the cycle of poverty and recommend changes to those policies and procedures;

(5) Create a long-range strategic plan containing:

(a) Measurable goals and benchmarks, including future action needed to attain those goals and benchmarks, for decreasing the incidence of intergenerational poverty among the state's children and increasing the number of the state's children who escape the cycle of poverty; and

(b) Recommended data-supported changes to policies, procedures, and programs to address the needs of children affected by intergenerational poverty and to help those children escape the cycle of poverty, including the steps that will be required to make the recommended changes and whether further action is required by the Legislature or the federal government; and

(6) Protect the privacy of individuals living in poverty by using and distributing the data it collects or examines in compliance with federal requirements and with sections 84-712 to 84-712.09.

Source: Laws 2015, LB607, § 5.
Operative date May 28, 2015.

50-431 Intergenerational Poverty Task Force; powers.

To accomplish its duties, the Intergenerational Poverty Task Force may:

(1) Request and receive from any state or local governmental entity or institution information relating to poverty in the state, including reports, audits, data, projections, and statistics; and

(2) Appoint special committees to advise and assist the task force. Members of any such special committee shall be appointed by the chairperson of the task force and may be members of the task force or individuals from the private or public sector. A special committee shall report to the task force on the progress of the special committee. Members of a special committee appointed under this section may not receive reimbursement or pay for work done in relation to the special committee.

Source: Laws 2015, LB607, § 6.
Operative date May 28, 2015.

50-432 Intergenerational Poverty Task Force; reports; contents.

(1) On or before December 15, 2015, the Intergenerational Poverty Task Force shall submit a preliminary report and on or before December 15, 2016, the task force shall submit a final report (a) to the Governor and (b) electronically to the Executive Board of the Legislative Council.

(2) The preliminary report and the final report shall:

(a) Include the long-range strategic plan required pursuant to section 50-430;

(b) Describe how the task force fulfilled its statutory purposes and duties during the time period covered by the report;

(c) Describe policies, procedures, and programs that have been implemented or modified to help break the cycle of poverty for children affected or at risk of being affected by intergenerational poverty; and

(d) Contain recommendations on how the state should act to address issues relating to breaking the cycle of poverty for children affected or at risk of being affected by intergenerational poverty.

Source: Laws 2015, LB607, § 7.
Operative date May 28, 2015.

50-433 Intergenerational Poverty Task Force; termination.

The Intergenerational Poverty Task Force terminates on December 31, 2016.

Source: Laws 2015, LB607, § 8.
Operative date May 28, 2015.

50-434 Committee on Justice Reinvestment Oversight; created; members; duties; report.

(1) The Legislature finds that while serious crime in the State of Nebraska has not increased in the past five years, the prison population continues to increase as does the amount spent on correctional issues. The Legislature further finds that a need exists to closely examine the criminal justice system of the State of Nebraska in order to increase public safety while concurrently reducing correctional spending and reinvesting in strategies that decrease crime and strengthen Nebraska communities.

(2) It is the intent of the Legislature that the State of Nebraska work cooperatively with the Council of State Governments Justice Center to study and identify innovative solutions and evidence-based practices to develop a data-driven approach to reduce correctional spending and reinvest savings in strategies that can decrease recidivism and increase public safety and for the executive, legislative, and judicial branches of Nebraska state government to work with the Council of State Governments Justice Center in this process.

(3) The Committee on Justice Reinvestment Oversight is created as a special legislative committee to maintain continuous oversight of the Nebraska Justice Reinvestment Initiative and related issues.

(4) The special legislative committee shall be comprised of five members of the Legislature selected by the Executive Board of the Legislative Council, including the chairperson of the Judiciary Committee of the Legislature who shall serve as chairperson of the special legislative committee.

(5) The Committee on Justice Reinvestment Oversight shall monitor and guide analysis and policy development in all aspects of the criminal justice system in Nebraska within the scope of the justice reinvestment initiative, including tracking implementation of evidence-based strategies as established in Laws 2015, LB605, and reviewing policies to improve public safety, reduce recidivism, and reduce spending on corrections in Nebraska. With assistance from the Council of State Governments Justice Center, the committee shall monitor performance and measure outcomes by collecting data from counties and relevant state agencies for analysis and reporting.

(6) The committee shall prepare and submit an annual report of its activities and findings and may make recommendations to improve any aspect of the criminal justice system. The committee shall deliver the report to the Governor, the Clerk of the Legislature, and the Chief Justice by September 1 of each year. The report to the clerk shall be delivered electronically.

Source: Laws 2014, LB907, § 11; R.S.Supp.,2014, § 28-1501; Laws 2015, LB605, § 76.
Effective date August 30, 2015.

ARTICLE 12

LEGISLATIVE PERFORMANCE AUDIT ACT

- Section
- 50-1203. Terms, defined.
- 50-1204. Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; duties.
- 50-1206. Performance audits; tax incentive performance audit; how initiated; procedure.
- 50-1208. Performance audit; committee; duties; office; duties.
- 50-1209. Tax incentive performance audits; schedule; contents.
- 50-1210. Report of findings and recommendations; distribution; confidentiality; agency response.
- 50-1211. Committee; review materials; reports; public hearing; procedure.
- 50-1212. Written implementation plan; duties.
- 50-1213. Office; access to information and records; agency duties; prohibited acts; penalty; proceedings; not reviewable by court; committee or office employee; privilege; working papers; not public records.
- 50-1214. Names not included in documents, when; state employee; how treated; prohibited act; violation; penalty.
- 50-1215. Violations; penalty.

50-1203 Terms, defined.

For purposes of the Legislative Performance Audit Act:

(1) Agency means any department, board, commission, or other governmental unit of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska but does not include (a) any court, (b) the Governor or his or her personal staff, (c) any political subdivision or entity thereof, or (d) any entity of the federal government;

(2) Auditor of Public Accounts means the Auditor of Public Accounts whose powers and duties are prescribed in section 84-304;

(3) Business day means a day on which state offices are open for regular business;

(4) Committee means the Legislative Performance Audit Committee;

(5) Committee report means the report released by the committee at the conclusion of a performance audit;

(6) Legislative Auditor means the Legislative Auditor appointed by the Executive Board of the Legislative Council under section 50-401.01;

(7) Majority vote means a vote by the majority of the committee's members;

(8) Office means the office of Legislative Audit;

(9) Performance audit means an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action. Performance audits may have a variety of objectives, including the assessment of a program's effectiveness and results, economy and efficiency, internal control, and compliance with legal or other requirements;

(10) Preaudit inquiry means an investigatory process during which the office gathers and examines evidence to determine if a performance audit topic has merit;

(11) Tax incentive performance audit means an evaluation of a tax incentive program pursuant to section 50-1209; and

(12) Working papers means those documents containing evidence to support the office's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the office during the performance audit or preaudit inquiry.

Source: Laws 1992, LB 988, § 3; Laws 2003, LB 607, § 5; Laws 2004, LB 1118, § 1; Laws 2006, LB 588, § 1; Laws 2006, LB 956, § 3; Laws 2013, LB39, § 3; Laws 2015, LB538, § 1.
Effective date August 30, 2015.

50-1204 Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; duties.

(1) The Legislative Performance Audit Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided for in the Legislative Performance Audit Act. The committee shall be composed of the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the chairperson of the Appropriations Com-

mittee of the Legislature, and four other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislative Performance Audit Committee includes adequate geographic representation. The chairperson and vice-chairperson of the Legislative Performance Audit Committee shall be elected by majority vote. For purposes of tax incentive performance audits authorized in section 50-1209, the committee shall include as nonvoting members the chairperson of the Revenue Committee of the Legislature or his or her designee and one other member of the Revenue Committee, as selected by the Revenue Committee. The Legislative Performance Audit Committee shall be subject to all rules prescribed by the Legislature. The committee shall be reconstituted at the beginning of each Legislature and shall meet as needed.

(2) The Legislative Auditor shall ensure that performance audit work conducted by the office conforms with performance audit standards contained in the Government Auditing Standards (2011 Revision) as required in section 50-1205.01. The office shall be composed of the Legislative Auditor and other employees of the Legislature employed to conduct performance audits. The office shall be the custodian of all records generated by the committee or office except as provided by section 50-1213, subsection (11) of section 77-2711, or subdivision (10)(a) of section 77-27,119. The office shall inform the Legislative Fiscal Analyst of its activities and consult with him or her as needed. The office shall operate under the general direction of the committee.

Source: Laws 1992, LB 988, § 4; Laws 2003, LB 607, § 6; Laws 2006, LB 588, § 2; Laws 2006, LB 956, § 4; Laws 2008, LB822, § 1; Laws 2013, LB39, § 4; Laws 2013, LB40, § 1; Laws 2015, LB538, § 2. Effective date August 30, 2015.

50-1206 Performance audits; tax incentive performance audit; how initiated; procedure.

(1) Requests for performance audits may be made by the Governor, any other constitutional officer of the State of Nebraska, a legislator, the Legislative Auditor, the Legislative Fiscal Analyst, or the Director of Research of the Legislature.

(2) Performance audit requests shall be submitted to the committee chairperson or Legislative Auditor by letter or on a form developed by the Legislative Auditor.

(3) When considering a performance audit request, if the committee determines that the request has potential merit but insufficient information is available, it may, by majority vote, instruct the Legislative Auditor to conduct a preaudit inquiry.

(4) Upon completion of the preaudit inquiry, the committee chairperson shall place the request on the agenda for the committee's next meeting and shall notify the request sponsor of that action.

(5) Tax incentive performance audits shall be initiated as provided in section 50-1209.

Source: Laws 1992, LB 988, § 6; Laws 2003, LB 607, § 9; Laws 2006, LB 956, § 6; Laws 2008, LB822, § 3; Laws 2015, LB538, § 3. Effective date August 30, 2015.

50-1208 Performance audit; committee; duties; office; duties.

(1) The committee shall, by majority vote, adopt requests for performance audit. The committee chairperson shall notify each requester of any action taken on his or her request.

(2) Before the office begins a performance audit, it shall notify in writing the agency director, the program director, when relevant, and the Governor that a performance audit will be conducted.

(3) Following notification, the office shall arrange an entrance conference to provide the agency with further information about the audit process. The agency director shall inform the agency staff, in writing, of the performance audit and shall instruct agency staff to cooperate fully with the office.

(4) After the entrance conference, the office shall conduct the research necessary to draft a scope statement for consideration by the committee. The scope statement shall identify the specific issues to be addressed in the audit. The committee shall, by majority vote, adopt, reject, or amend and adopt the scope statement prepared by the office.

(5) Once the committee has adopted a scope statement, the office shall develop an audit plan. The audit plan shall include a description of the research and audit methodologies to be employed and a projected deadline for completion of the office's report. The audit plan shall be submitted to the committee, and a majority vote shall be required for its approval. Upon approval of the audit plan, the agency shall be notified in writing of the specific scope of the audit and the projected deadline for completion of the office's report. If the office needs information from a political subdivision or entity thereof to effectively conduct a performance audit of an agency, the political subdivision or entity thereof shall provide information, on request, to the office.

(6) If the performance audit reveals a need to modify the scope statement or audit plan, the Legislative Auditor may request that the committee make revisions. A majority vote shall be required to revise the scope statement or audit plan. The agency shall be notified in writing of any revision to the scope statement or audit plan.

Source: Laws 1992, LB 988, § 8; Laws 2003, LB 607, § 11; Laws 2006, LB 956, § 8; Laws 2013, LB39, § 6; Laws 2015, LB538, § 4.
Effective date August 30, 2015.

50-1209 Tax incentive performance audits; schedule; contents.

(1) Tax incentive performance audits shall be conducted by the office pursuant to this section on the following tax incentive programs:

- (a) The Angel Investment Tax Credit Act;
- (b) The Beginning Farmer Tax Credit Act;
- (c) The Nebraska Advantage Act;
- (d) The Nebraska Advantage Microenterprise Tax Credit Act;
- (e) The Nebraska Advantage Research and Development Act;
- (f) The Nebraska Advantage Rural Development Act;
- (g) The Nebraska Job Creation and Mainstreet Revitalization Act;
- (h) The New Markets Job Growth Investment Act; and

(i) Any other tax incentive program created by the Legislature for the purpose of recruitment or retention of businesses in Nebraska. In determining whether a future tax incentive program is enacted for the purpose of recruitment or retention of businesses, the office shall consider legislative intent, including legislative statements of purpose and goals, and may also consider whether the tax incentive program is promoted as a business incentive by the Department of Economic Development or other relevant state agency.

(2) The office shall develop a schedule for conducting tax incentive performance audits and shall update the schedule annually. The schedule shall ensure that each tax incentive program is reviewed at least once every three years.

(3) Each tax incentive performance audit conducted by the office pursuant to this section shall include the following:

(a) An analysis of whether the tax incentive program is meeting the following goals:

(i) Strengthening the state's economy overall by attracting new business to the state, expanding existing businesses, increasing employment, creating high-quality jobs, and increasing business investment;

(ii) Revitalizing rural and other distressed areas of the state;

(iii) Diversifying the state's economy and positioning Nebraska for the future by stimulating entrepreneurial, high-tech, and renewable energy firms; and

(iv) Any other program-specific goals found in the statutes for the tax incentive program being evaluated;

(b) An analysis of the economic and fiscal impacts of the tax incentive program. The analysis may take into account the following considerations in addition to other relevant factors:

(i) The extent to which the tax incentive changes business behavior;

(ii) The results of the tax incentive for the economy of Nebraska as a whole. This consideration includes both direct and indirect impacts generally and any effects on other Nebraska businesses; and

(iii) A comparison to the results of other economic development strategies with similar goals, other policies, or other incentives;

(c) An assessment of whether adequate protections are in place to ensure the fiscal impact of the tax incentive does not increase substantially beyond the state's expectations in future years;

(d) An assessment of the fiscal impact of the tax incentive on the budgets of local governments, if applicable; and

(e) Recommendations for any changes to statutes or rules and regulations that would allow the tax incentive program to be more easily evaluated in the future, including changes to data collection, reporting, sharing of information, and clarification of goals.

Source: Laws 1992, LB 988, § 9; Laws 2003, LB 607, § 12; Laws 2013, LB39, § 7; Laws 2015, LB538, § 5.
Effective date August 30, 2015.

Cross References

Angel Investment Tax Credit Act, see section 77-6301.

Beginning Farmer Tax Credit Act, see section 77-5201.

Nebraska Advantage Act, see section 77-5701.

Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.

Nebraska Advantage Research and Development Act, see section 77-5801.

Nebraska Advantage Rural Development Act, see section 77-27,187.

Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.

New Markets Job Growth Investment Act, see section 77-1101.

50-1210 Report of findings and recommendations; distribution; confidentiality; agency response.

(1) Upon completion of a performance audit, the office shall prepare a report of its findings and recommendations for action. The Legislative Auditor shall provide the office's report concurrently to the committee, agency director, and Legislative Fiscal Analyst. The committee may, by majority vote, release the office's report or portions thereof to other individuals, with the stipulation that the released material shall be kept confidential.

(2) When the Legislative Auditor provides the report to the Legislative Fiscal Analyst, the Legislative Fiscal Analyst shall issue an opinion to the committee indicating whether the office's recommendations can be implemented by the agency within its current appropriation.

(3) When the Legislative Auditor provides the report to the agency, the agency shall have twenty business days from the date of receipt of the report to provide a written response. Any written response received from the agency shall be attached to the committee report. The agency shall not release any part of the report to any person outside the agency, except that an agency may discuss the report with the Governor. The Governor shall not release any part of the report.

(4) Following receipt of any written response from the agency, the Legislative Auditor shall prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the office's report or recommendations.

Source: Laws 1992, LB 988, § 10; Laws 2003, LB 607, § 13; Laws 2006, LB 956, § 9; Laws 2012, LB782, § 79; Laws 2013, LB39, § 8; Laws 2015, LB538, § 6.
Effective date August 30, 2015.

50-1211 Committee; review materials; reports; public hearing; procedure.

(1) The committee shall review the office's report, the agency's response, the Legislative Auditor's summary of the agency's response, and the Legislative Fiscal Analyst's opinion prescribed in section 50-1210. The committee may amend and shall adopt or reject each recommendation in the report and indicate whether each recommendation can be implemented by the agency within its current appropriation. The adopted recommendations shall be incorporated into a committee report, which shall be approved by majority vote.

(2) The committee report shall include, but not be limited to, the office's report, the agency's written response to the report, the Legislative Auditor's summary of the agency response, the committee's recommendations, and any opinions of the Legislative Fiscal Analyst regarding whether the committee's recommendations can be implemented by the agency within its current appropriation.

(3) The committee may decide, by majority vote, to defer adoption of a committee report pending a public hearing. If the committee elects to schedule a public hearing, it shall release, for review by interested persons prior to the hearing, the office's report, the agency's response, the Legislative Auditor's

summary of the agency's response, and any opinions of the Legislative Fiscal Analyst. The public hearing shall be held not less than ten nor more than twenty business days following release of the materials.

(4) When the committee elects to schedule a hearing, a summary of the testimony received at the hearing shall be attached to the committee report as an addendum. A transcript of the testimony received at the hearing shall be on file with the committee and available for public inspection. Unless the committee votes to delay release of the committee report, the report shall be released within forty business days after the public hearing.

(5) Once the committee has approved its report, the committee shall, by majority vote, cause the committee report to be released to all members of the Legislature and to the public. The report submitted to the members of the Legislature shall be submitted electronically. The committee may, by majority vote, release the committee report or portions thereof prior to public release of the report. Each tax incentive performance audit report shall also be presented at a joint hearing of the Appropriations Committee and Revenue Committee of the Legislature.

Source: Laws 1992, LB 988, § 11; Laws 2003, LB 607, § 14; Laws 2006, LB 956, § 10; Laws 2012, LB782, § 80; Laws 2013, LB39, § 9; Laws 2015, LB538, § 7.
Effective date August 30, 2015.

50-1212 Written implementation plan; duties.

(1) Within forty business days following the release of the committee report, the agency shall provide to the committee a written implementation plan describing the action planned and timeframe for accomplishment of each of the recommendations contained in the committee report, except that the committee may waive such requirement for tax incentive performance audits.

(2) The agency director shall make every effort to fully implement the recommendations that can be implemented within the limits of the agency's current appropriation. For those recommendations which require additional appropriations or the drafting of legislation, the committee shall sponsor the legislation or present the proposal for additional or revised appropriations to the Appropriations Committee of the Legislature.

(3) The Legislative Performance Audit Committee shall establish a system to ascertain and monitor agency conformity to the recommendations contained in the committee report and compliance with any statutory changes resulting from the report recommendations.

Source: Laws 1992, LB 988, § 12; Laws 2003, LB 607, § 15; Laws 2015, LB538, § 8.
Effective date August 30, 2015.

50-1213 Office; access to information and records; agency duties; prohibited acts; penalty; proceedings; not reviewable by court; committee or office employee; privilege; working papers; not public records.

(1) The office shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, unless the office is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the agency shall provide the

committee with a written explanation of its inability to produce such information and records and, after reasonable accommodations are made, shall grant the office access to all information and records or portions thereof that can legally be reviewed. Accommodations that may be negotiated between the agency and the committee include, but are not limited to, a requirement that specified information or records be reviewed on agency premises and a requirement that specified working papers be securely stored on agency premises.

(2) Upon receipt of a written request by the office for access to any information or records, the agency shall provide to the office as soon as is practicable and without delay, but not more than three business days after actual receipt of the request, either (a) the requested materials or (b)(i) if there is a legal basis for refusal to comply with the request, a written denial of the request together with the information specified in subsection (1) of this section or (ii) if the entire request cannot with reasonable good faith efforts be fulfilled within three business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, and an opportunity for the office to modify or prioritize the items within the request. No delay due to the significant difficulty or the extensiveness of a request for access to information or records shall exceed three calendar weeks after actual receipt of such request by any agency. The three business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.

(3) Except as provided in this section, any confidential information or confidential records shared with the office shall remain confidential and shall not be shared by an employee of the office with any person who is not an employee of the office, including any member of the committee. If necessary for the conduct of the performance audit, the office may discuss or share confidential information with the chairperson of the committee. If a dispute arises between the office and the agency as to the accuracy of a performance audit or preaudit inquiry involving confidential information or confidential records, the Speaker of the Legislature, as a member of the committee, will be allowed access to the confidential information or confidential records for the purpose of assessing the accuracy of the performance audit or preaudit inquiry.

(4) Except as provided in subdivision (10)(c) of section 77-27,119, if the speaker or chairperson knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor. Except as provided in subsection (11) of section 77-2711 and subdivision (10)(c) of section 77-27,119, if any employee or former employee of the office knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor and, in the case of an employee, shall be dismissed.

(5) No proceeding of the committee or opinion or expression of any member of the committee or office employee acting at the direction of the committee shall be reviewable in any court. No member of the committee or office employee acting at the direction of the committee shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters relating to the work of the office except in a proceeding brought to enforce the Legislative Performance Audit Act.

(6) Pursuant to sections 84-712 and 84-712.01 and subdivision (5) of section 84-712.05, the working papers obtained or produced by the committee or office shall not be considered public records. The committee may make the working papers available for purposes of an external quality control review as required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any information which would be considered confidential when in the possession of the office.

Source: Laws 1992, LB 988, § 13; Laws 2003, LB 607, § 16; Laws 2006, LB 588, § 5; Laws 2013, LB39, § 10; Laws 2015, LB539, § 3.
Effective date May 28, 2015.

50-1214 Names not included in documents, when; state employee; how treated; prohibited act; violation; penalty.

(1) By majority vote, the committee may decide not to include in any document that will be a public record the names of persons providing information to the office or committee.

(2) No employee of the State of Nebraska who provides information to the committee or office shall be subject to any personnel action, as defined in section 81-2703, in connection with his or her employment as a result of the provision of such information.

(3) Any person exercising his or her supervisory or managerial authority to recommend, approve, direct, or otherwise take or affect personnel action in violation of subsection (2) of this section shall be guilty of a Class III misdemeanor and shall be subject to personnel action up to and including dismissal from employment with the state.

Source: Laws 1992, LB 988, § 14; Laws 2003, LB 607, § 17; Laws 2006, LB 588, § 6; Laws 2013, LB39, § 11; Laws 2015, LB539, § 4.
Effective date May 28, 2015.

50-1215 Violations; penalty.

Any person who willfully fails to comply with the provisions of section 50-1213 or who otherwise willfully obstructs or hinders the conduct of a performance audit or preaudit inquiry or who willfully misleads or attempts to mislead any person charged with the duty of conducting a performance audit or preaudit inquiry shall be guilty of a Class II misdemeanor.

Source: Laws 1992, LB 988, § 15; Laws 2003, LB 607, § 18; Laws 2006, LB 588, § 7; Laws 2015, LB539, § 5.
Effective date May 28, 2015.



CHAPTER 52

LIENS

Article.

13. Filing System for Farm Product Security Interests. 52-1307 to 52-1317.

ARTICLE 13

FILING SYSTEM FOR FARM PRODUCT SECURITY INTERESTS

Section

52-1307. Effective financing statement, defined.

52-1312. Central filing system; Secretary of State; duties; system requirements; fees.

52-1317. Verification of security interest; seller; duty.

52-1307 Effective financing statement, defined.

Effective financing statement means a statement that:

- (1) Is an original or reproduced copy thereof;
- (2) Is filed by the secured party in the office of the Secretary of State;
- (3) Is signed, authorized, or otherwise authenticated by the debtor, unless filed electronically, in which case the signature of the debtor shall not be required;
- (4) Contains (a) the name and address of the secured party, (b) the name and address of the debtor, (c) the approved unique identifier of the debtor, (d) a description of the farm products subject to the security interest, (e) each county in Nebraska where the farm product is produced or located, (f) crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest, (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person or persons but not subject to the particular security interest, and (h) such other information that the Secretary of State may require to comply with section 1324 of the Food Security Act of 1985, Public Law 99-198, or to more efficiently carry out his or her duties under sections 52-1301 to 52-1322;
- (5) Shall be amended in writing, within three months, and signed, authorized, or otherwise authenticated by the debtor and filed, to reflect material changes. If the statement is filed electronically, the signature of the debtor shall not be required;
- (6) Remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refiling or filing a continuation statement within six months before the expiration of the five-year period;
- (7) Lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;
- (8) Is accompanied by the requisite filing fee set by section 52-1313; and

(9) Substantially complies with the requirements of this section even though the statement contains minor errors that are not seriously misleading.

An effective financing statement properly filed with a social security number or an Internal Revenue Service taxpayer identification number shall maintain its effectiveness regardless that such numbers are not required on such statement.

An effective financing statement may, for any given debtor or debtors, cover more than one farm product located in more than one county.

Source: Laws 1986, Third Spec. Sess., LB 1, § 7; Laws 1998, LB 924, § 20; Laws 1998, LB 1321, § 90; Laws 1999, LB 552, § 1; Laws 2002, LB 1105, § 439; Laws 2003, LB 4, § 2; Laws 2007, LB124, § 61; Laws 2015, LB464, § 1.
Effective date August 30, 2015.

52-1312 Central filing system; Secretary of State; duties; system requirements; fees.

The Secretary of State shall design and implement a central filing system for effective financing statements. The Secretary of State shall be the system operator. The system shall provide a means for filing effective financing statements or notices of such financing statements on a statewide basis. The system shall include requirements:

(1) That an effective financing statement or notice of such financing statement shall be filed in the office of the Secretary of State. A debtor's residence shall be presumed to be the residence shown on the filing. The showing of an improper residence shall not affect the validity of the filing. The filing officer shall mark the statement or notice with a consecutive file number and with the date and hour of filing and shall hold the statement or notice or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements and notices according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement;

(2) That the Secretary of State compile information from all effective financing statements or notices filed with the Secretary of State into a master list (a) organized according to farm product, (b) arranged within each such product (i) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors, (ii) in numerical order according to the approved unique identifier of the individual debtors, (iii) geographically by county, and (iv) by crop year, and (c) containing the information referred to in subdivision (4) of section 52-1307;

(3) That the Secretary of State cause the information on the master list to be published in lists (a) by farm product arranged alphabetically by debtor and (b) by farm product arranged numerically by the debtor's approved unique identifier. If a registered buyer so requests, the list or lists for such buyer may be limited to any county or group of counties where the farm product is produced or located or to any crop year or years or a combination of such identifiers;

(4) That all buyers of farm products, commission merchants, selling agents, and other persons may register with the Secretary of State to receive lists described in subdivision (3) of this section. Any buyer of farm products,

commission merchant, selling agent, or other person conducting business from multiple locations shall be considered as one entity. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration which shall include the name and address of the registrant and the list or lists described in subdivision (3) of this section which such registrant desires to receive. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars.

A registrant shall pay an additional annual fee to receive quarterly lists described in subdivision (3) of this section. For each farm product list provided on microfiche, the annual fee shall be twenty-five dollars. For each farm product list provided on paper, the annual fee shall be two hundred dollars. The annual fee for a special list which is a list limited to fewer than all counties or less than all crop years shall be one hundred fifty dollars for each farm product.

The Secretary of State shall maintain a record of the registrants and the lists and contents of the lists received by the registrants for a period of five years;

(5) That the lists as identified pursuant to subdivision (4) of this section be distributed by the Secretary of State on a quarterly basis and be in written or printed form. A registrant may choose in lieu of receiving a written or printed form to receive statewide lists on microfiche. The Secretary of State may provide for the distribution of the lists on any other medium and establish reasonable charges therefor. The distribution shall be made by either certified or registered mail, return receipt requested.

The Secretary of State shall, by rule and regulation, establish the dates upon which the quarterly distributions will be made, the dates after which a filing of an effective financing statement will not be reflected on the next quarterly distribution of lists, and the dates by which a registrant must complete a registration to receive the next quarterly list; and

(6) That the Secretary of State remove lapsed and terminated effective financing statements or notices of such financing statements from the master list prior to preparation of the lists required to be distributed by subdivision (5) of this section.

Effective financing statements or any amendments or continuations of effective financing statements originally filed in the office of the county clerk that have been indexed and entered on the Secretary of State's central filing system need not be retained by the county filing office and may be disposed of or destroyed.

The Secretary of State shall apply to the Secretary of the United States Department of Agriculture for (a) certification of the central filing system and (b) approval of the system or method of selecting an approved unique identifier.

The Secretary of State shall deposit any funds received pursuant to subdivision (4) of this section in the Uniform Commercial Code Cash Fund.

Source: Laws 1986, Third Spec. Sess., LB 1, § 12; Laws 1988, LB 943, § 13; Laws 1998, LB 924, § 21; Laws 1998, LB 1321, § 91; Laws 2005, LB 451, § 1; Laws 2007, LB124, § 63; Laws 2015, LB464, § 2.

Effective date August 30, 2015.

52-1317 Verification of security interest; seller; duty.

In order to verify the existence or nonexistence of a security interest, a buyer, commission merchant, or selling agent may request a seller to disclose such seller's approved unique identifier.

Source: Laws 1986, Third Spec. Sess., LB 1, § 17; Laws 2007, LB124, § 67; Laws 2015, LB464, § 3.
Effective date August 30, 2015.